

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CIVIL JURISDICTION**

Civil Action No. **HBC 268** of 2020

**BETWEEN** : **SPECIALIZED TRANSPORTERS (FIJI) LIMITED** having its registered office at Tamavua -i-wai, Suva, Fiji.

**PLAINTIFF**

**AND** : **AVON INVESTMENTS LIMITED** having its registered office at 1<sup>st</sup> Plaza, 2<sup>nd</sup> Floor, Module 3, FNPF Building, Suva, Fiji.

**DEFENDANT**

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

**COUNSEL** : **Mr. Solanki B.** for the Plaintiff

**Mr Nand S.** for the Defendant

**DATE OF JUDGMENT:** 21<sup>st</sup> January, 2026 @ 9.30am.

## **JUDGMENT**

*(Special, General damages and Breach of Contract)*

On the outset, the Plaintiff's case claim's Judgment in the sum of \$305,000 whereas the Defendant has filed a Statement of Defence and a Counter-claim based on the Stop Work Notice issued by Suva City Council.

### **Introduction**

1. The Plaintiff filed a Writ of Summons on 10<sup>th</sup> September 2020. In its Statement of Claim the Plaintiff claimed the following:
  - (a) Judgment in the sum of \$305,000;
  - (b) Further or alternatively, special and general damages for breach of contract.
  - (c) Pre and post judgment interest at such rate as the Court thinks fit and or under the provisions of the Law Reform (Miscellaneous Provisions) (Death and interest) Act;
  - (d) Cost of an incidental to this action
  - (e) Any other relief this Honourable Court may deem just.
2. The Plaintiff and the Defendant entered into a Formal Agreement on 29<sup>th</sup> January 2018. The Plaintiff would provide civil earthworks at the Defendants property located at Tamavua-i-wai and in particular, Lot 9 on the scheme and engineering plan on drawing file no. 1736.
3. The Plaintiff pleads that having completed 80% of the works on the said property, as per the Agreement of 29<sup>th</sup> January 2018, issued a progressive invoice to the Defendant and claims judgment against the Defendant for the balance sum of \$305,000.
4. In breach of the Agreement, the Defendant has refused and/or neglected to pay the said amount of \$305,000 to the Plaintiff.
5. The Defendant subsequently filed a Statement of Defence and the Counterclaim on 08<sup>th</sup> October 2020.
6. The Defendant admits paragraph 5 to 9 inclusive of the Plaintiff's Statement of Claim that required him:
  - Scope of works to be performed,
  - Time to complete the work was 3 months,
  - However, an extension of time would be granted due to weather inclemental,
  - Defendant agreed to pay \$500,000 contract sum for the Execution and completion of the works,
  - 10% of the contract sum of \$50,000 was paid on 26<sup>th</sup> February 2018; and
  - Balance of the payment under the agreement would be paid out in progressive manner during the duration of the works.
7. Paragraph 12 of the Statement of Claim as per the five (5) breakdown payments totaling \$50,000 was paid.

8. As to paragraph 13, the Defendant says \$110,000 has been paid to the Plaintiff. There is no dispute to this payment.
9. Paragraph 14 and 17 is denied and according to the Defendant the Plaintiff has completed less than 20% of the work and had failed to complete the works within 3 months' time period. Further, the Defendant states that the Plaintiff did not carry out the works to the value of \$305,000 and therefore, the Plaintiff is not entitled to Judgment or the claimed sum of \$305,000.
10. The Defendant in its Counterclaim states that the Plaintiff owed a duty of care to the Defendant in carrying out the works as per the Agreement and to be completed with reasonable care and skill and done in accordance with the approved engineering plans and in a manner that no harm or damage is caused to any land or building adjacent to the Plaintiffs land and negligently and in breach of its Contractual duty, the Plaintiff did not carry out the works in accordance with the approved plans and works were not performed in a proper and careful manner.
11. Hence, the Defendant on his Counterclaim is seeking for the following orders-
  - Judgment in the sum of \$10,000 being advance payment made to the Plaintiff,
  - Costs of incomplete work (to be quantified), and
  - Costs of remedial works and construction of retaining walls,
  - Damages for loss, and
  - Damages for Breach of Contract,
  - Rental income,
  - Interests; and
  - Costs.

### **Evidence**

12. The Plaintiff called Mr. Rony Chan, Director of the Plaintiff Company as its sole witness. The Defendant's called Mr. Samisoni Matasere, a surveyor and planner with Autor & Associates and Mr. Takeshor Pal, Director of the Company as its witnesses.
13. The evidence of the witnesses will not be reproduced in its entirety. Only the pertinent parts of the evidence addressing the pivotal issues within the Plaintiff's claim and Defence and Counterclaim will be analyzed and determined in order to reach a just and fair judgment accordingly.

### **Analysis and Determination**

14. That Plaintiff is engaged in the business of earthmoving works and general civil engineering works whereas the Defendant is engaged in investment related activities including the business of land and property development.
15. The Plaintiff was required to carry out clearing, grubbing, excavation and land development on the said property in accordance with the engineering plan dated 24<sup>th</sup> January 2018 and the

scheduled quantities - bulk earthworks - civil works which was attached to the formal instrument of the agreement.

16. The Plaintiff undertook the required earthworks to enable the Defendant to construct the multiple apartments as per the engineering plans. Time to complete the work was 3 months with any extension. A 10% [\$50,000] of the total agreed contract sum of \$500,000 vat inclusive was paid upon the commencement of the work and mobilization of equipment as per the formal instrument of Agreement.
17. It was a condition that the balance of payment under the Agreement would be paid out in a **progressive manner** during the duration of the works carried out by the Plaintiff on the Defendant's land.
18. A total sum of \$100,000 was paid by the Defendant to the Plaintiff which was made up as follows:

\$50,000	-	10% deposit
\$50,000	-	5 payment of \$10,000 each paid on 1/2/2020, 20/2/2020, 2/3/2020, 16/3/2020 and 8/5/2020.
<b>Total</b>	<b>-</b>	<b>\$100,000</b>
19. The total balance sum of \$400,000 of the Contract sum of \$500,000 remained impending and to be paid in a progressive manner thereafter.
20. According to the Defendant, it took the Plaintiff more than 3 months from the time of approval of the engineering plans on 29<sup>th</sup> November 2019, that the Plaintiff had only completed less than 20% of the works and had failed to complete the works within the required 03 months period as per the formal instrument of the Agreement [Exhibit - P1].
21. The Plaintiff's contention was otherwise and stated that he had completed the works listed in items 1, 2, 3, 4, 8 and 80% of works within item No. 7 of the scope of works.
22. On 29<sup>th</sup> July 2020, the Plaintiff subsequently issued a **progressive invoice** for **\$305,000** - [Exhibit - P11], in accordance with the contract agreement of schedule of payment advisory of 13 March 2020, [Exhibit - P6] to the Defendant.
23. The question(s) that arises for this Court to determine are:
  - (a) **How much of the work did the Plaintiff carry out and/or completed in terms of the scope of works within the Agreement and whether the Plaintiff is entitled to the Judgment sum of \$305,000, General Damages, special damages, interest and costs?**
24. The Plaintiff's Contention all along has been that he had carried out 80% of the work as per his email of 6<sup>th</sup> March 2020 to the Defendant (Exhibit - P5), and the Defendant has paid only a sum of \$90,000. However, [DW2] - Takeshor Pal in his letter of 07 August 2020 to the

- Plaintiff, confirmed a total payment of \$110,000 as per Exhibit - D4. Further, the Plaintiff's submissions under undisputed facts at paragraph 6.14 confirms that a total of \$110,000 has been paid by the Defendant to the Plaintiff.
25. The Defendant wrote an email to the Plaintiff on 13<sup>th</sup> March 2020 [Exhibit P6], where the Defendant confirms that he had paid \$90,000 to date to continue with the Plaintiff's earthworks as scheduled by him and the balance owing is \$410,000 and would be paid as follows: \$200,000 - on 15/4/20, \$105,000 - on 15/5/20, and \$105,000 - on 15/6/20.
  26. According to [PW1] - Rony Chan's evidence, he had carried out the works within the scheduled of Quantities at item nos. 1,2,3,4,8 and completed 80% of works at item no. 7.
  27. However, PW1 admittedly did not carry out the 'Culvert Installation' works at item no. 5 and 'Head Wall' at item no. 6.
  28. [DW2] Mr. Takeshor Pal, in his capacity as the Director of Avon Investments Limited, testified that-
    - Gave job to the Plaintiff Company for Residential site.
    - Scope of work attached to the Agreement, at item Nos. 1-10 with schedule to be carried out.
    - Item No. 1, mobilization took place, and Item No. 2, Grubbing etc carried out, Item No. 4, stripped topsoil.
    - However, Item Nos. 3, 5 and 6 were not done.
    - Item No. 7 - Partial work done to 10-15% only.
    - Item No. 9 - work not going accordingly to plan by Suva City Council (SCC).
  29. [DW1] - Samisoni Matasere an Independent Environment Impact Assessment Specialist testified in its letter of 05<sup>th</sup> June 2020 [Exhibit - P9] that *'80% of the Bulk Earthworks as per item 7 of the scope of works was completed. The Residential platforms which the Plaintiff was working on needed to be Excavated (cut and filled) to a total volume of 25,000 cubic meters and that 20,000 cubic meters (80%) had already been cut and filled.'* However, he was unable to provide any evidence as to how much of the total work was carried out and completed by the Plaintiff.
  30. From the oral evidence of the witnesses hereinabove it can now be ascertained as to how much of the Bulk Earthworks - Civil Works was carried out and completed by the Plaintiff in term of the total of 10 items of the schedule of quantities annexed to the Formal Instrument of Agreement.
  31. At paragraph 16.0 of the Plaintiff's Statement of Claim, there is admission by the Plaintiff that by reason of the Defendants refusal or neglect to pay the said Amount of \$305,000, the Plaintiff is now deprived of the income and does not have the financial capacity to complete the **'remainder of the works'** and has therefore suffered loss and damages.
  32. This is clear indication by the Plaintiff of the fact that there is incomplete and remainder of pending work within the scope of works impending completion. The question then arises, how much of the remainder of work within the scope of work within the Agreement remains to be completed by the Plaintiff.

- Whether this prompted the Defendant to terminate the Contract between the Plaintiff and the Defendant?
  - Whether the Plaintiff is then entitled to its claim of \$305,000 given the 'stop work order by Suva City Council' which to date, over a period of five (05) years remains intact, hampering, further development by the Defendant on its land?
33. [PW1] - Rony Chan admittedly did not carry out and complete the 'Culvert Installation' work at item no. 5 and 'Head Wall' at item no. 6. If calculated, how much work in terms of [\$] value was carried out and completed as per the schedule of quantities by the Plaintiff, can be simply calculated as follows:

- Item No. 1 - \$ 20,000
- Item No. 2 - \$ 21,000
- Item No. 3 - \$ 10,000
- Item No. 4 - \$ 13,000
- Item No. 7 - \$288,000
- Item No. 8 - \$ 5,000
- Total Amount - \$357,000

34. However, the Plaintiff did not carry out and complete the works at:

- Item No. 5 - \$36,600 and
- Item No. 6 - \$ 8,000
- Total Sum - \$44,600

35. Therefore, the [\$] value of the total work carried out and completed by the Plaintiff:

	\$357,000 [work done]
	<u>\$44,600 [not done]</u>
Amount	<u>\$312,400</u>

36. Further, a sum of 10% of the Contract Sum of \$50,000 was paid upfront on 15<sup>th</sup> February 2018 and a total Installment payment [5x \$10,000] of \$50,000, adding up to a total of \$100,000 plus \$10,000 advance payment (\$110,000) was already paid by the Defendant to the Plaintiff.

37. Upon crediting \$110,000 to the [\$] value of the work carried out by the Plaintiff at \$312,400, would leave with a Balance of \$202,400 in total that the Defendant now needs to pay to the Plaintiff.

38. On the balance of probabilities, the Plaintiff is only entitled to claim a balance sum of \$202,400, and accordingly I enter a Judgment for the Plaintiff against the Defendant in the sum of \$202,400.

**(b) 'Whether the Plaintiff then Excavating 2 meters away from the neighboring properties. [Lot 1 DP 5784] retaining wall was adequate in**

**order to carry out the Excavation Works without taking any risk of causing damage to the retaining wall [Fence]?’**

39. The Defendant alleged that the Plaintiff had illegally excavated into the portion of the Land where the neighbors retaining wall collapsed (Lot 1 DP 5784) which was on a sloppy land and whereby the Plaintiff needed to excavate at least 5 meters away from the neighbors fence and create a step like structure and then excavate the land due to the nature of the sloppy land.
40. The neighbour complained to Suva City Council which resulted in stop work notice issued on 14 February 2021.
41. The Defendant added that his view was that the work was not carried out in line with the Engineering plan.
42. [PW1] - Rony Chan explained in relation to the slippage and/or collapsed retaining wall [fence] of the neighbor at Lot 1 Deposit Plan No. 5784 as per the engineering plan [Exhibit -P3]. The Plaintiff admitted that there had been some soil erosion under the fence following the Excavation Works carried out by the Plaintiff. However, [PW1] - Rony Chan explained:
  - That the Plaintiff had excavated to the required 2 metres from the neighbouring compound (Lot 1 Deposit Plan No. 5784) and that he was of the view that 2 meters was a safe distance from the fence,
  - Mr. Chan had offered a solution to the Defendants to fix the problem by building a gabion wall in the affected area (Lot 1 Deposit Plan No. 5784) which would have costs approximately \$15,000.
  - Mr. Chan was not prepared to attend to this remedial works unless the Plaintiff had been paid for the works already done on the residential site, and
  - Stop work order issued by Suva City Council on 10<sup>th</sup> June 2020 (Exhibit - D3) was only issued in relation to the slippage that took place at Lot 1 on Deposit Plan No. 5784.
43. The Remedial Action Plan Report was prepared by Autor and Associates and Global Development [Exhibit - P5 within Defendant's Bundle of Documents] - which confirmed [PW1] - Mr. Chan's evidence that 'there were storm water pipes protruding out of the neighbouring property into the Defendant's land where the slippage occurred and had contributed to the soil erosion and this slippage was not solely the result of excavation works done by the Plaintiff.'
44. [DW1] - Samisoni Matasere's evidence in relation to slippage, admitted that it can be caused by the storm water coming through the pipes from Lot Deposit Plan No. 5784 into the Defendant's land.
45. Whereas [DW2] - Takeshwar Pal's evidence was that 'he accused the Defendant of having carried out the illegal excavation works and referred to Stop Work Order Notice of 16<sup>th</sup> February 2021 by Suva City Council (SCC). The Plaintiff was only contracted to do earthworks

in the residential zone. The Excavation Works according to him was not carried out in accordance with the engineering plan.

46. A plan was lodged by the Defendant's surveyors to the Suva City Council with regards to the neighbours retaining wall and Earthworks since the work was not done properly by the Plaintiff and the Suva City Council asked for a remedial plan which was later lodged by Autor and Associates and Global Development.
47. It is noted that Mr. Epeli Nasome in his capacity as an Independent Environment Impact Assessment Specialist, in its letter of 5<sup>th</sup> June 2020 [Exhibit P9], referred to by the Plaintiff - [PW1] - Mr. Chan that in relation to the slippage at Lot 1 DP no. 5784 [Exhibit - P3], wherein he admits that there had been some erosion under the fence following the Excavation Works carried out by the Plaintiff. However, the soil erosion was worsened by the owners of the property located at Lot 1 on DP no. 5784 as there were storm water drainage pipes that came out through the fence into the Defendant's land and also could have washed away the soil.
48. Yet again, when the 'Remedial Action Plan Report' was prepared by Autor and Associates and Global Development Ltd of 19<sup>th</sup> July 2021, at paragraph 3.0:

"notwithstanding that....., we had noticed the presence of nova-flow pipes from adjacent properties into the site, in particular from two properties Lot 1 on DP no. 5784 and Lot 2 on DP no. 5958 over time, as water percolates the soil, the topsoil forming a gully walls becomes over saturated and vulnerable to lateral spreading/ collapsed."
49. The common law position is that a Landowner may make an Excavation of his own land notwithstanding that by doing so, he may cause his neighbor's land to fall (*Wyatt v Harrison (1832) 3 Barn & Adol.*
50. Suva City Council on 10<sup>th</sup> June 2020 and 16<sup>th</sup> February 2021 served the Defendant with Stop Work Notice and contravening the provisions of Regulations 17(5) of the towns [Building].
51. Before the Plaintiff commenced with the Excavation of 2 meters away from the neighboring compound on Lot 1 on DP no. 5784, the Plaintiff should have physically examined the area which was subject to Excavation and 'whether there existed underground pipes of any nature and/or that because of water percolated the soil, since it was on a slope and may result in over saturation and hence vulnerable to collapse?
52. The required 2 meters Excavation from the neighboring compound on Lot 1 on DP no. 5784, was not a safe distance to carry out the Excavation Works.
53. The Plaintiff hereafter offered a solutions to the Defendant to fix the problem by building a Gabion Wall in the affected area [Lot 1 on DP no. 5784] which would have cost approximately \$15,000 to which the Defendant disagreed.
54. I find that the Excavation Works carried out by the Plaintiff 2 meters away from the neighboring compound was not sufficient distance rather risk taken which then had caused the erosion, subsidence, weakening the foundations and exposing the neighboring fence to

collapse. However, justice would hence been served if the Plaintiff paid for the Construction of the fallen fence on Lot 1 DP no. 5784 since the Formal Agreement between parties to the proceedings at clause 2 mentions 'Remedying of defects'.

**(c) 'Whether the Plaintiff negligently and in breach of its contractual duty failed to carry out the works in accordance with the approved plans and if the works were not performed in a proper and careful manner?'**

55. The Formal Instrument of Agreement [Exhibit - P1] was executed between the Plaintiff and the Defendant on 29<sup>th</sup> January 2018. This Formal Agreement was drawn up by the Plaintiff.
56. The Engineering Plan [PE1 pg.4] was approved by the Suva City Council on 29<sup>th</sup> November 2019, some one year and 09 months after the Agreement was entered into between the parties to the proceedings.
57. The Contract time to complete the work within the annexed Scheduled of Quantities was 03 months with uninterrupted good weather. Extension of time was to be extended due to inclement weather. There is no evidence that at anytime any formal extension of time to complete the contract was sought and granted.
58. All parties were to fulfil all obligations imposed on them in this Contract.
59. However, Evidence revealed that the Plaintiff had not carried out and completed the works at item nos. 5 and 6 of the Scope of Works. Further, whilst carrying out the Excavation Works on the Defendants Land, the neighboring fence at Lot 1 on DP no. 5784 collapsed.
60. The Suva City Council issued a 'Stop Work Notice' dated 10<sup>th</sup> June 2020 which stated:

'Adjacent property Lot 1, Certificate of Title No. 23403, Deposit Plan No. 5784 the rear fence collapsed as a result of your earthwork excavation.'

You were required to stop work until above issue has been resolved.'
61. Subsequently, the Defendant issued a letter to the Plaintiff on 17/8/2020, informing the Plaintiff that the Defendant had Terminated the Agreement after a period or lapse of 2 years and 9 months.
62. According to the Defendant, the basis upon which he had terminate the Agreement of 29<sup>th</sup> January 2018 was; that the Plaintiff had taken more hen 03 months; and yet he was unable to fulfill the Contractual Obligations Executed, between them; and that the Agreement did not have any existing termination clause.
63. The contention that is raised by the Defendant is that 'the Plaintiff was Negligent and in breach of its Contractual Duty and failed to carry out the Works in accordance with the approved plans. That neighboring fence fell due to Excavation carry out 2 meters away from the neighboring land.

**Was the Plaintiff negligent and in breach of its Contractual Duty?**

64. No doubt, the Plaintiff has expeditiously admitted that the slippage took place during Excavation on the Residential Zone and in order to carry out the remedial work of the fallen fence, the Defendant needed to pay the Plaintiff the 80% works the Plaintiff had already done and completed.
65. However, he advised the Defendant that a Gabion Wall was to be erected in order to overcome this problem. The Defendant disagreed.
66. The Plaintiff explained to Court about the slippage and/or collapsed retaining wall [fence]. He admitted there had been some soil erosion under the fence, executed to the required 2 meters from the neighbouring Compound [Lot 1 on Deposit Plan No. 5784], and offered a solution of building a Gabion Wall to fix the problem. Subsequently, Suva City Council issued a 'Stop Work Order', and the Excavation works came to a halt.
67. Refer to 3.0 Summary of findings - Land slip Area (SITE 2 - PART A) of Global Development Ltd within Defendants Bundle of Documents at annexure 10 which states:

'According to Riley Consultant Geotechnical Investigations Report of 31<sup>st</sup> August 2018, possible cause of Land slip was water ingress into the slope, as the land slopes down from the east to the site and to the gully; the gully acts as the large storm water catchment area for the properties located off Narain place. Our Topo Survey on SITE - 2, we noticed the presence of Nova- flow pipes from adjacent properties discharging to the SITE, in particular, from the two properties Lot 1 on Deposit Plan No. 5784 and Lot 2 on Deposit Plan 5958. Overtime, as water percolate the soil, topsoil forming as gully walls become over saturated and vulnerable to lateral spreading.'

68. The remedy recommended was to construct a Retaining Wall Structure.
69. I find that the slippage did not occur due to the Negligence of the Plaintiff. It in fact was contributed by the Nova- flow pipes from adjacent properties discharging to the site on (Lot 1 on Deposit Plan No. 5784 and Lot 2 on Deposit Plan 5958).
70. The Plaintiff was in fact carrying out the Excavation Works in terms of the approved plans in hand and therefore was not in breach of its Contractual duty.
71. It was rather unfortunate for the Plaintiff that the neighboring fence collapsed. However, he readily advised the Defendant of building a Gabion Wall, but the Defendant would not agree.
72. I reiterate that Justice would have prevailed if the Defendant agreed and the Plaintiff had built the Gabion Wall which the Plaintiff said will costs \$15,000.

**Breach of Contract**

73. Did the Defendant breach the Contract when it refused and or neglected to pay the progressive invoice for the sum of \$305,000?

74. The Formal Instrument of Agreement entered into between the parties to the proceedings mutually agreed to all the clauses set out there in coupled with the 'Schedule of Quantities' and parties to carry out and fulfill all the obligations imposed in the said Contract.
75. This provides that the Contract is a 'Measure and value contract' in terms of which the Defendant was required to pay the Plaintiff, the progressive sum as ascertained for each item of work carried out by the Plaintiff.
76. Therefore, the Formal Instrument of Agreement of 29<sup>th</sup> January 2018 *ab-initio* was valid for the purpose of carrying out the works therein.
77. For the execution and completion of the works as per the attached schedule of quantities the Defendant agreed to pay Plaintiff a total contract sum of \$500,000.
78. The Defendant paid the Plaintiff 5 that 10% of Contract Sum of \$50,000 on 26<sup>th</sup> February 2018.
79. Thereafter, the Defendant paid the Plaintiff 5 progressive payments of \$10,000 totaling \$50,000.
80. That in subtotal \$100,000 was paid by the Defendant to the Plaintiff in respect of serviced provided by the Plaintiff.
81. On 07<sup>th</sup> May 2020, the Defendant paid \$10,000 to the Plaintiff as advance payment.
82. That in total a sum of \$110,000 was paid to the Plaintiff by the Defendant. [\$110,000 is admitted at paragraph 14 of the Pre-Trial Conference Minutes].
83. On 29<sup>th</sup> July 2020, the Plaintiff issued a progressive invoice for a sum of \$305,000 to the Defendant [Exhibit - P1] for the 80% of the Work carried out and completed.
84. Prior to the issue of progressive invoice, on 10<sup>th</sup> June 2020, Suva City Council issued a 'stop work order' giving reasons that the rear fence has been collapsed on Lot 1, Certificate of Title: 23403, Deposit Plan No. 5784 as a result of the earthwork Excavation. Subsequently, on 16<sup>th</sup> February 2021, Suva City Council issued a second notice to the Defendant for immediate stop work due to illegal Excavation [Exhibit - D3].
85. The Plaintiff was still working on the site when the stop work order was served.
86. The Plaintiff subsequently withdraw all his machines from site due to the no payment of \$200,000 as agreed to in the Defendants Commitment where it would fund the Excavation Works through the Sale of another Land and other sources.
87. On 07<sup>th</sup> August 2020 the Defendant wrote to the Plaintiff and informed that the contract of 29<sup>th</sup> January 2018 was now being terminated for reasons that the 'Plaintiff has not carried out the Civil/Earthworks according to the Contract and Suva City Council issued the Stop Work Notice, neglected your supervision and mislead own company being as qualified civil and structural Engineer and obtained money with false pretenses.'

88. The 'Stop Work Notice' clearly required the Defendant to cease all work immediately.
89. The remaining work in terms of the schedule of quantities came to a halt and the 'stop work order' to the current is still intact.
90. I am satisfied on the totality of evidence before Court that the Formal Instrument of Agreement [Contract] was lawfully terminated by the Defendant bearing in mind, that there were no 'Termination Clauses' within the Contract, Stop Work Notice issued to cease all work immediately delay in carrying out and completing the entire works and due to non-performance on the part of the Plaintiff.
91. I am inclined to disagree with the Plaintiff's Contention that the Defendant was in breach of the Agreement, when the Defendant refused and neglected to pay the said amount of \$305,000 as claimed by the Plaintiff. In absence of any breach the Plaintiff is not entitled to any special or general damages as sought for.
92. Further, I am not convinced that because of the non-payment of \$305,000, the Plaintiff was deprived of income and does not have the financial capacity to complete the remainder of the work on the Defendants premises and/or has suffered any loss and damages.

**Defendants Counter-claim**

93. The Defendant has sought for eight [08] reliefs in its Counter-claim.
94. The Defendant is not entitled to \$10,000 reimbursement since it was paid as an advance payment to the Plaintiff and has been credited toward the progressive payment at paragraph 24 of my Judgment hereinabove.
95. Costs for incomplete works was not established and qualified by the Defendant before trial. Therefore, there will be no orders made hereof.
96. Costs for remedial works and for Construction of retaining wall. The Plaintiff qualified he will build a Gabion Wall and fix the problem at \$15,000. The Defendant refused. I grant the Defendant a sum of \$15,000 for this relief.
97. Costs for re-engaging a qualified Civil/ Structural Engineer and a Surveyor and Geotech. The Defendant engaged the services of Autor and Associates. However, no costs for re engagement at trial was qualified.
98. Damages for loss of Rental income for the apartments. There is no evidence that the Apartments already existed and rented and/or if built and rented how much income it would earn. Therefore, this relief fails.

99. *General Damages for breach.* This Court did not find any breach of Contract on the part of the Plaintiff. Therefore, this relief also fails.
100. Interest on damages - since there is no award of any damages. Question of interest fails.

#### **Costs Generally**

101. This matter proceeded to full trial and went on for two (2) consecutive days with the Plaintiff calling one witness and the Defendant two witnesses.
102. It is only appropriate that each party to this proceedings bear their own costs at this court discretion.

#### **Orders**

103. Judgment for the Plaintiff in the total sum of Two Hundred and Two Thousand and Four Hundred dollars [\$202,400].
104. There is no breach by the Plaintiff and no special and general damages granted.
105. There will be a 4% Post Judgment interest only on the Judgment sum of Two Hundred and Two Thousand and Four Hundred dollars [\$202,400] calculated from the date of Judgment until full payment of Two Hundred and Two Thousand and Four Hundred dollars [\$202,400] is made by the Defendant to the Plaintiff.
106. The Plaintiff to bear its own costs of the proceedings at the discretion of this Court.

#### **Counter-claim**

107. There will be no Judgment for \$10,000 advance payment since it has been set off in the substantive Plaintiff's claim.
108. There will not be any costs for incomplete works since it has not been qualified by the Defendant at trial.
109. There will be a Judgment for \$15,000 for the Defendant for remedial works of fixing the collapse fence.
110. There will be no Judgment for re-engaging a qualified Civil/Structural Engineer and a Qualified Surveyor and Geo-Tech since Costs Not Qualified.

111. There will be no Judgment for any rental income for apartments since not established and/or quantified.
112. No Judgment for *General Damages* and interest since no breach of Contract existed.
113. The Defendant to bear its own costs of the proceedings to this Courts discretion.

Dated at **Suva** this **21<sup>st</sup>** day of **January** ,2026



  
VISHWA DATT SHARMA  
PUISNE JUDGE

cc: Solanki Lawyers, Suva  
Nands Law, Suva