

FIJI MUSLIM LEAGUE v MOHAMMED AYAIS SALEEM and Anor

HIGH COURT — CIVIL JURISDICTION

5 SCOTT J

16 April 2002

[2002] FJHC 47

10 **Practice and procedure — applications — summary judgment — deed of indemnity and guarantee — no duress in law.**

Plaintiff sought repayment through summary judgment against defendants by virtue of a deed of indemnity and guarantee regarding a scholarship signed by the latter. Defendants
15 agreed to repay the sums advanced under the agreement but refused to pay.

Held — First defendant knew perfectly well when he signed the application forms for the scholarship that he would be required to repay the sums advanced to him. There is no duress without violence or threats of violence to person or goods.

Application allowed.

20 **Case referred to**

Barton v Armstrong [1976] AC 104, cited.

S. Parshotam for the Plaintiff

25 *R. Singh* for the Defendants

Judgment

Scott J. This is the Plaintiff’s application for summary judgment against the Defendants brought pursuant to the provisions of RHC 014.

30 Two affidavits were filed:

(i) Subhan Ali, in support, 24 January 2002;

(ii) 1st Defendant, in opposition, 26 March 2002.

On 30 May 1991 the 1st Defendant applied for a scholarship offered by the Islamic Development Bank. In his application a copy of which is Ex SA2 to the
35 supporting affidavit the 1st Defendant explained that he wished to study medicine. He wanted to use his new qualification to the benefit of members of his community living in remote areas: “to give them vital medical education so that they can improve their health standards”.

On page 3 of his application (Ex SA3) there was Form 2. In this form the 1st
40 Defendant who had already being educated to class 8 level declared that:

Once I have completed my studies under the IDB Scholarship Programme I will continue to assist development of my community and country and will refund the amount of scholarship as soon as I start employment.

45 The Form 2 declaration was accompanied by a Form 3 certificate (Ex SA4) which stated, inter alia that the Defendant was “of good conduct and high moral character” and that he promised to:

Fully comply with the rules and regulations of the IDB Scholarship Programme.

50 Form 3 was followed by Form 4 which was also signed by the Defendant in May 1991. This Form which was headed “Declaration of Refund” contained the following declaration:

I Mohammed Ayais Saleem the undersigned applicant in the town Ba country Fiji applying for IDB scholarship do solemnly declare that I shall refund the whole amount paid to me by the Islamic Development Bank Jeddah to any organisation/body named by the IDB.

5 After being witnessed the Form continued with the following certificate:

CERTIFICATE OF THE MUSLIM ORGANISATION ON THE ABOVE DECLARATION

10 *The Muslim Organisation Fiji Muslim League Ba Branch in the town Ba, Country Fiji certifies that the above student accepts that he will refund the whole amount paid to him by the Islamic development Bank Jeddah to any organisation/body named by the IDB after completing his education.*

15 On a date unknown to me but subsequent to the application and prior to 14 November 1991 the 1st Defendant's application for a scholarship was approved.

On 14 November 1991 the 1st and 2nd Defendants signed a deed of indemnity and guarantee (Ex SA 6).

20 As appears from this deed the Defendants jointly and severally explicitly agreed to repay the funds advanced under the scholarship to the Fiji Muslim League either upon completion of the course of study or following failure to complete the course studied for whatever reasons. The second paragraph of the second page of the deed reads:

25 *The student and/or guarantor under no circumstances shall be exempted from repayment of the said loan, loans or advances to the League.*

30 In late 1991 the 1st Defendant proceeded to the Allama Iqbal Medical College of Pakistan. According to Ex SA8 (not denied by the Defendant) a total of US\$19,750.44 was paid to the Defendant during the 8 years 1991–99. Mr Parshotam told me that under an exchange rate formula that amount (very much in the Defendant's favour) amounts to F\$26,633.90.

35 The 1st Defendant successfully graduated with his medical degree on 29 June 1998. He then returned to Fiji. Subsequent to his return he obtained employment with the Ministry of Health. According to his affidavit filed herein on 26 March 2002 he is now employed as a medical officer at the Lami Health Centre.

On dates unknown to me the Fiji Muslim League sought repayment of the sums advanced to the 1st Defendant under the scholarship. The Defendants refused to repay. The writ was filed on 24 October 2002.

40 Two statements of defence were filed, the first in November 2000 and the second in July 2001. Broadly these two defences advance the same case which is repeated in the affidavit filed in March 2001 in opposition to this application.

45 The Defendant denies owing the Plaintiff anything at all. The Defendants say they were surprised to be asked to sign the 14 November deed. The 1st Defendant explains that he had already made arrangements to depart for Pakistan and had already told his friends and relatives that he would be going. Not then to have gone would have been embarrassing and "therefore the document was signed under duress". Mr Singh suggested that this amounted to a defence on the merits and that the order 14 application should be dismissed.

50 As pointed out by Mr. Parshotam (who filed an excellent helpful written submission) the proposed defence ignores two important matters. The first is that the 1st Defendant knew perfectly well when he signed the application forms for

the scholarship in May that he would be required to repay the sums advanced to him. There can therefore be no question of any surprise in the following November.

Second, embarrassment cannot in law amount to a defence of duress. Duress in law is quite distinct from mere pressure (see *Barton v Armstrong* [1976] AC 104). In the absence of violence or threats of violence to person or goods there is no duress.

Far from having a defence on the merits I am of the opinion that the Defendants' case is one of the least meritorious ever to come before me.

There will be judgment for the Plaintiff in the amount claimed. I will hear counsel as to costs.

Application allowed.

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