

**PRINTHOUSE LTD v LAND TRANSPORT AUTHORITY
(HBC0037 of 2010)**

HIGH COURT — CIVIL JURISDICTION

5 KOTIGALAGE J

6 March, 2, 24 April 2012

10 **Contract — breach of contract — tender for supply of stickers — purported
cancellation — purchase order for lesser amount — whether part of supply on tender
— whether binding agreement — whether defendant breached terms of agreement
— damages — Financial Management Act s 81.**

15 The plaintiff submitted a tender to supply to the defendant with 150,000 wheel tax
stickers at a cost of \$181,000. The defendant accepted the offer and placed an order for
20,000 stickers. When the plaintiff arranged for the delivery of the 20,000 stickers, the
defendant refused to accept them and advised by letter that the order had been cancelled
earlier. The plaintiff was not aware of any cancellation. The plaintiff claimed that placing
an order for 20,000 stickers and the defendant's refusal to accept the order was in breach
of their agreement.

20 **Held –**

(1) The plaintiff has established there was a binding agreement between the plaintiff
and the defendant, and that the defendant had breached the agreement. The purchase order
for 20,000 stickers was a part supply of the 150,000 stickers tendered by the plaintiff.

25 (2) Government institutions cannot arbitrarily cancel an accepted tender and give it to
another tenderer. In such an event, all tenders should be properly cancelled and there
should be a recall for new tenders and, if any tender was accepted at that point, previous
tenderers' expenses should be compensated.

Application allowed.

Case referred to

30 *State v Public Works Tender Board exparte Bright International Ltd* [2008] FJHC
41, cited.

R P Singh for the Plaintiff.

R May for the Defendant.

35 **Kotigalage J.**

Background

[1] The Plaintiff filed writ of summons against Land Transport Authority
claiming \$181,500 together with interest and costs on indemnity basis.

40 **Plaintiff's case**

[2] On 7th of October 2009 the Defendant advertised the tenders for supply of
various forms, books and labels whereby tenderers were required to advise the
Defendant the price of each item listed by the Defendant in the tender.

45 [3] The Plaintiff by letter dated 15th October 2009 offered to supply various
forms, books and labels at price specified in the letter and attachments.

[4] It was specifically agreed to supply 150,000 wheel tax stickers for the year
2010 at the rate of \$1.21 per sticker totaling to the sum of \$181,000.00.

50 [5] The Defendant accepted the offer and placed an order for 20,000 stickers to
the value of \$24,200.00. For this purpose Purchase Order No. P000008424 dated
4/12/2009 was issued by the Defendant to supply 20000, 2010 wheel tax stickers
as per approved tender.

[6] After issuance of the purchase order Plaintiff instructed his supplier to print 150,000 labels and immediately to supply 20,000 stickers to fulfill the order placed by the Defendant.

5 [7] When Plaintiff arranged for the delivery of the 20,000 stickers to the Defendant, in exchange of the cheque for \$24,200.00 the Defendant refused to accept same and advised by letter dated 7th January 2010 order was cancelled on 6th December 2009. Plaintiff was not aware of such cancellation.

10 [8] Plaintiff claimed in para 8 of the statement of claim placing order for 20,000 stickers and conduct of the Defendant refusing to accept the order is breach of the Agreement by the Defendant with the Plaintiff.

Defendants case

[9] Defendant admitted 1st and 2nd paragraphs of the statement of claim and in para 3 advertising on 9th October 2009 calling for tenders.

15 [10] Defendant admitted para 4 of the statement of Defence receipt of letter dated 15th October 2009 by the Plaintiff and stated Defendants is only expression of interest.

20 [11] The Defendant also had stated and admitted that the Defendant had refused to accept the delivery of 20,000 stickers in exchange of cheque of \$24,200.00

[12] Further it was stated and admitted by the Defendant that Local Purchase order was issued for the supply of the 20,000 wheel tax stickers to the Plaintiff on 4th December 2009.

25 [13] On 7th of December 2009 at the meeting resolved to cancel the order and same was informed to the Defendant on 8th December 2008.

[14] The Defendant specifically pleaded in the statement of Defence the Cancellation of the Local purchase order was informed to the Defendant by letters dated 7th January 2010 and 8th January 2010.

30 [15] The Defendant also denied any binding contract with the Plaintiff and prayed the Plaintiff claim be dismissed.

[16] Reply to the statement of Defence was filed by the Plaintiff on 26th April 2010. Stating that the Plaintiff joins issue with the Defendant on its statement of Defence save in so far as the same consists of admissions and prayed for the dismissal of the Defendants statement of defence and Judgment to be entered in
35 favour of Plaintiff.

[17] Copy of Pleadings and agreed bundle of documents were filed on 14th January 2011.

Analysis and Findings

40 [18] The issues to be decided in this care are as follows:

- *As to whether by issuing Purchase order for 20000 wheel tax stickers is it a part of the supply on tender for 150,000 stickers;*
- *As to whether there was a binding agreement between the Plaintiff and Defendant on the Purchase of 150,000 stickers?;*
- 45 • *As to whether Plaintiff established in this case a binding agreement with the Defendant for the purchase of 150,000 stickers and as to whether Defendant breached the terms of the agreement;*
- *If the answers for above are affirmative as to whether Plaintiff is entitle to its claim?*

50 [19] On behalf of the Plaintiff Company the Counsel called Mr I. Singh to give evidence.

Summary of evidence

- (a) *Mr I Singh is the General Manager of the Plaintiff.*
- (b) *He submitted the agreed bundle of documents formally to court marking as Exhibits A1 to A9.*
- 5 (c) *Plaintiff's business and Defendants Legal position and Defendant's functions were explained which were admitted in the Statement of Defence, and in the agreed facts.*
- (d) *It was stated by the witness every year the Defendant was issuing wheel tax stickers to the vehicles which passes the fitness test.*
- 10 (e) *The Defendant published an advertisement in Fiji Sun on 8th October 2009 calling for Goods and services which was marked as Plaintiff's Exhibit A8.*
- (f) *The Plaintiff had responded to the advertisement by its letter dated 15th October 2009 together with the prices for the items in the Tender. The said letter and the document quoting the prices is marked as Plaintiff's Exhibit A1 in the Agreed Bundle of documents.*

15 [19] In the Plaintiff's Exhibit A1 referred to 150000 Wheel Tax stickers. It is noted last page of the quoted list it appears under LTA labels.

"QTY AMOUNT VIP
\$181,500 (\$1.21 each)"

20 [20] The witness stated that when he called the Defendants office after 15th October 2009 it was informed to him by the Defendant they will issue a Purchase order for 20,000 stickers on the sample already forwarded to the Defendant.

25 [21] When the witness visited the Defendant's office on 3rd December 2009 the officers of the Defendant stated they immediately need 20,000 stickers and Purchase order was issued to Plaintiff for 20,000 stickers. The said Purchase Order No. PO000008424 dated 04/12/2009 was marked as Plaintiff's Exhibit A2.

30 [22] It was stated by the witness the Plaintiff immediately placed the order with the suppliers for 150,000 stickers and before tendering, the Plaintiff had got the Price and samples from the supplier. He stated the Plaintiff ordered 150,000 stickers because tender was for 150,000 stickers. Ordering less quantity the price will be more, and the Plaintiff had to order full quantity as per tender to meet the price quoted.

35 [23] Witness stated stocks arrived on 10th January 2010. When witness visited the Defendants office to inquire about the matter it was informed by Purchasing Officer Mr Tui Masi that the Plaintiffs Purchase order was cancelled and was given to another party. This was around 4th January 2010.

40 [24] Having made to understand the Purchase order was cancelled the witness informed the Plaintiff and the company sent an email to CEO Mr Etuate Koroi of the Defendant, in reply to the Defendants letter dated 6th January 2010. (Email marked as Plaintiff's Exhibit A3 and letter dated 6th January 2010 marked as Plaintiff's Exhibit A4).

45 Indicating interalia

- (a) *As informed by the Defendant there was no intimation given to the Company the purchase order dated 4th December 2009, was cancelled on 6th December 2009;*
- (b) *Stated that the Company is willing to settle this matter amicably.*

50 [25] Witness also stated the said email was replied by the Defendant on 7th January 2009 which was marked as Plaintiff's Exhibit A4 and in the Reply marked Exhibit A5 the Plaintiff has taken up the position that 6th December 2009

was a Sunday. Immediately the Defendant replied by letter dated 8th January 2010 stating the correct cancellation date is not the 6th its 8th of December 2009. Witness stated that no information or intimation was given to the Plaintiff in December 2009 that the said purchase order was cancelled.

5 [26] Exhibit A9 was read out by the witness which was the Agreement dated 17th December 2009 signed between Land Transport Authority and Rev Designs & Signs Limited for supply of \$150,000 stickers. Payment of 50% of the Agreed sum of 150,000 was paid at the signing of the agreement. Later part of 2011 when the Court case was pending the refused \$24,200 worth stickers were purchased
10 by the Defendant and witness stated Plaintiff is willing to reduce the said sum from the amount prayed in this case. The witness stated the Plaintiff prays for the reliefs in the statement of claim.

[27] When the witness was cross examined by the Counsel for the Defendant there was no contradiction or change of his version made. The Defendant counsel
15 suggested that there was no order for 150,000 and only order was for 20,000 stickers which position was denied by the witness.

Defendant's Evidence

[28] The Defendants Counsel called Ms Miliana Kabuqubaki, Manager Audit
20 of the Defendant as the witness.

- (a) *The witness explained the procedure for Tender Acceptance. The witness admitted that Local Purchase order is issued only after Tender was approved by the Tender Sub Committee;*
- 25 (b) *The witness stated the 20000 stickers were ordered on the approved tender and that was for immediate supply;*
- (c) *The tender committee decided to give the tender to all 3 Local Companies who quoted and sample was supplied only by the Plaintiff Company;*
- (d) *The Main Board of the Defendant had taken a decision to give the order to Rev Design subsequently, for reasons unknown to her.*

30 Cross Examination by the Counsel for the Plaintiff.

- (a) *The witness admitted that interested parties obtain the form from Defendants office and admitted Exhibit A1 is the detailed list of items and it states quantity of wheel stickers was 150,000 and that is the estimated requirement for one
35 year.*
- (b) *Witness admitted the quantity was divided into batches and ordered accordingly by issuing purchase orders.*
- (c) *It is stated that the purchase order was issued on the Tender submitted by the Plaintiff. Rev Design didn't submit any sample.*
- (d) *Later witness found Tender was given to Rave Design by the Agreement dated
40 17th December 2009. Marked Plaintiff's Exhibit A9.*
- (e) *By that time the tender submitted by the Plaintiff was accepted and board had directly approved the Tender of Rev Design and was made to understand sample was directly given to a Board Member.*

[29] Under Re examination by the counsel for the Defendant witness further
45 stated the Tender conditions sample was to be forwarded with the Tender. Except for the Plaintiff, the other tenderers including the Rev Designs who signed the Agreement on 17th December 2009 failed to furnish the samples with the Tender. Answering question by the Courts witness admitted by issuing Local Purchase Order for 20000 stickers amounts to acceptance of the Tender by the Plaintiff for
50 150,000 stickers and the said 20000 stickers were part supply of the tender for 150000 stickers.

Analysis of the Evidence

[30] It is my conclusion by analyzing the evidence placed before the Courts by both parties Plaintiff had proved his Statement of Claim and no evidence was adduce by the Defendant to prove its Statement of Defence. I arrive at this
5 conclusion for the following reasons.

(a) (a) The following facts were established:

(i) *Tender was published on 7th October 2009 in Fiji Sun (Plaintiff's Exhibit A8);*

10 (ii) *Plaintiff tendered for the items under cover of letter dated 15th October 2005 Plaintiff's Exhibit marked A1 which was admitted by the witness who gave evidence on behalf of the Defendant. Further Defendant's witness admitted Plaintiff forwarded the sample along with the Tender where other parties failed to meet this requirement which was a Tender Condition;*

15 (iii) *Plaintiff's witnesses stated that Local Purchase order dated 4/12/2009 No: P00008424 marked as Plaintiff's Exhibit A2 was issued as per tender and that it was part of the 150,000 stickers already accepted by the Defendant and was corroborated by the witness for the Defendant. **The witness for the Defendant stated this answering to the question by the Defendant's counsel and me in Evidence in Chief. No evidence in rebuttal was led by the Defendant.***

20

Quote from the evidence of Defendants witness on page 27 of the proceedings:

R. MAY: Was there any written confirmation forwarded to their office in relation to this tender?

25

MILIANA: Whenever we receive tender we don't send acknowledgement letter but we receive it and go on with our process of tender.

R. MAY: Was there any confirmation or written confirmation forwarded to them stating or specifying that the tender has been awarded to them?

30

MILIANA: That was after the deliberation of the tender sub-committee. That's after the tender sub-committee has done the urgency of the tender but we didn't write directly but we just send the LPO after that.

HIS LORDSHIP: Can you repeat your answer?

MILIANA: We didn't send the letter but the LPO was issued to Print House after the deliberation of the tender board sub-committee.

35

HIS LORDSHIP: No confirmation of the tender is given to the tender. You just issue the LPO.

MILIANA: Yes sir

HIS LORDSHIP: LPO is issued not for the full quantity only on your requirement?

MILIANA: Yes Sir

HIS LORDSHIP: Is there any instance LTA issue the Local Purchase Order without a tender? It's usually after calling for tenders?

40

MILIANA: After the tender

HIS LORDSHIP: You just don't issue LPO to someone?

MILIANA: No, only if it's below \$300.00 purchase then we take quotation and then we'll issue LPO in terms of that.

45

HIS LORDSHIP: By issuing the LPO the difference get by the supplier for that item if his tender being approved

MILIANA: Yes, because they had already submitted that tender.

HIS LORDSHIP: On that basis you will issue the LPO?

MILIANA: Yes

50

I observe further in the Local Purchase order No. P00008424 dated 4/12/2009 it is stated (Plaintiff's Exhibit A2) clearly states under Description.

"Supply of 2010 wheel tax as per the approved tender (20000) copies."

[31] *As such I am convinced and I have no hesitation to conclude the Defendant had approved the Tender of the Plaintiff for supply of 150,000 stickers to the Defendant. Further I conclude that the said 20000 stickers were part of supply of the 150,000 stickers on the approved Tender. The Defendants*
5 *submission as stated in para 5 of the Statement of Defence that Defendant did not accept the offer from the Plaintiff fails and Defendants witness corroborate the position taken up by the Plaintiff.*

[32] It is also interesting to note that with the evidence placed before this Court inference was created in the mind of court that there was a interested person who
10 was on the board of the Plaintiff who obtained sample directly from an interested party Rev Design and signed an agreement with the said party on 17th December 2009 for supply of wheel tax stickers long after Plaintiff's tender was accepted. *I should specifically mention considering the evidence by Defendants witness all tender procedures and norms were violated by then Board Members and caused*
15 *damages to the Plaintiff, and the Defendant both.*

[33] The Defendant also in its statement of Defence states the Plaintiff's tender was cancelled at a meeting held on 6th of December 2009 which was a Sunday and after it was pointed out by the Plaintiff by email dated 7th January 2010, the
20 Defendant sent a letter to the Plaintiff that the date of the letter was not 6th December and it's 8th December 2009. Plaintiff claimed no intimation was given with regard to cancellation of Tender on 6th or as corrected later 8th December 2009. And Defendant failed to produce any evidence with regard to proof of a meeting held on 6th or 7th December 2009. I conclude that the alleged meeting
25 was never held and it was to justify the signing of the agreement with Rev Design & Sign Company on 17th December 2009.

[34] The Defendant's submissions was considered by me and the submissions does not support the position taken up the Defendants in this case. Analysis of the evidence does not prove matters in favour of the Defendant.

[35] In the submission it was quoted Section 81 of the Financial Management Act Section 11 of the regulations. It is submitted that Sub committee's decision is subject to Board Directions. In the present case Tender was approved and Purchase order was issued to the Tenderer for Part supply. It was well established
30 by the evidence. Plaintiff should not suffer at all for the faults of Board of the Defendant or the Subcommittee. Government institutions cannot arbitrarily cancel a accepted tender and give it to another tenderer. In such a event all tenders
35 should be properly cancelled and should recall for new Tenders, and if any tender was accepted at that point previous tenderers expenses should be compensated.

[36] The case quoted by the Defendant in its Submissions *State v Public Works Tender Board exparte Bright International Ltd* [2008] FJHC 41: HBJ 42.2007
40 (19th March 2008) is not relevant to this case and I am inclined to accept the decision of the said case.

[37] It was stated in the Defendants submission that Board had not sent any form of written confirmation to the Plaintiff. In my view it's a matter for the
45 Board not for the Plaintiff. When he was issued with a Local Purchase it is an acceptance of its tender. Plaintiff need not to wait for letter or document from the Board and Plaintiff acted on the belief that it's tender was accepted.

Plaintiff dealt with officers who were acting under the direction of the Board and
50 Board could deal with all matters of running of the functions of Defendant and it is not a concern of the Plaintiff.

[38] It is also revealed in the evidence although 20,000 stickers were needed why 150,000 stickers were ordered. The position taken up by the Plaintiff is that Plaintiff had tendered for 150,000 stickers and he obtained the price for 150,000 stickers. In commercial world it is accepted practice and norm that when large quantity is ordered price is low and lesser quantity attracts higher price. In the present case when the Plaintiff quoted for the tender for 150,000 stickers Plaintiff's supplier gave the price for the said quantity in terms of the tender. There was no reason for the Plaintiff to believe that its order is only for 20,000 stickers and when its tender was for 150,000 stickers. In the circumstances Defendants agreement fails and I hold with the Plaintiff.

[39] Having considered the evidence and written submission filed by the Defendant I conclude:

(a) *By issuing the Purchase order (Plaintiff's Exhibit A2) the said purchase order for 20,000 Wheel Tax stickers, is a part supply of the 150,000 stickers tendered by the Plaintiff;*

(b) *The Plaintiff had established there was a binding agreement between the Plaintiff and the Defendant (the Defendant had agreed to purchase 150,000 stickers from the Plaintiff) and the Defendant had breached the agreement;*

(c) *Plaintiff is entitled to the Claim reliefs as prayed for in the Statement of Claim.* Accordingly, I enter the Judgment in favour of the Plaintiff and make the following orders:

(a) *Defendant is ordered to pay the Plaintiff \$157300.00 for 130000 wheel tax stickers. (During the continuance of the case it was admitted by the Plaintiff, Defendant made the Payment for 20000 stickers and agreed to reduce the claim by \$24,200 and as such I reduced the claim of \$181500 to \$157300);*

(b) *Defendant is ordered to pay 4% interest per annum on \$181500 from 4th December 2009 up to the date of payment of \$24200 and there on Defendant is ordered to pay interest at the rate of 4% per annum on \$157,300.00 up to the date of Judgment;*

(c) *Defendant is further ordered to pay interest at the rate of 4% per annum on \$153,700.00 from the date of Judgment up to the full settlement of Total sum due to the Plaintiff;*

(d) *No order for general damages;*

(e) *Defendant is ordered to pay summarily assessed costs of \$2000 to the Plaintiff and no cost is ordered on indemnity basis.*

Application allowed.