

IN THE MAGISTRATES COURT OF FIJI

AT SUVA

Civil Case No: 66 of 2022

BETWEEN: SALTWATER SPORTS COMPANY LIMITED a company incorporated in Fiji and having its registered office at Lot 1, Nalovi, Nadi Town.

PLAINTIFF

AND: iTAUKEI LAND TRUST BOARD a statutory body duly constituted under the iTaukei Land Trust Act (Cap134) and having its office at 431, Victria Parade, Suva.

DEFENDANT

For the Plaintiff: Mr. Keteca, I.

For the defendant: Not represented

FORMAL PROOF JUDGEMENT

Introduction

1. Plaintiff instituted this action by filing the Statement of Claim together with the Writ of Summons dated 10-03-2022, claiming the defendant to refund the monies pay to them in sum of \$ 39,420.00 and general damages together with cost and interest.
2. Affidavit of service dated 12-04-2022 was filed of record on same date and the defendant was not present in court nor represented. There was no excuse for the absence. The presiding Magistrate had ordered for Formal Proof hearing and the hearing had been taken before me on 29-08-2022. Mr. Benjamin Seduadua, the Managing Director of the plaintiff company gave evidence. The following documents marked as evidence by the aforesaid witness.
 - (i) Plaintiff Ex 02 – Letter by the Defendant dated 08-02-2022
 - (ii) Plaintiff Ex 04 – iTaukei Lease No. 32671
 - (iii) Plaintiff Ex 05 – Photocopy of Cheque No. 000142 dated 07-12-2021 for \$ 39,420.00
3. Upon conclusion of the Plaintiff's evidence, Counsel for the plaintiff requested to file submissions and the same had been filed on 09-09-2022.

4. This court make the following judgement on this formal proof hearing after duly consider the Statement of Claim of the plaintiff, the oral and documentary evidence adduced in this court by the plaintiff and the written submissions filed by the plaintiff.

Burden and the standard of proof

5. Burden of proving whatever the claims made in the statement of claim lies with the plaintiff and the proving has to be to the standard of balance of probability.

Evidence of the plaintiff

6. This court now consider the evidence given before it on under oath by the witness for the plaintiff and the marked documents he submitted to the court as evidence. Those are the plaintiff's only evidence before the Court.
7. By the Statement of Claim, the plaintiff claims the following that:
 - i) they entered into a lease agreement with the defendant to lease a plot of native land as per the iTaukie Lease No 32671,
 - ii) land was acquired by the plaintiff on 15-04-2016 for the purpose of special tourism,
 - iii) plaintiff invested money for the development of the property and sold the lease on or about 12-12-2021 for \$ 197,100,00.
 - iv) The lease had a special condition in its first schedule that the plaintiff has to pay the defendant 20% of the sale consideration (after deducting the capital investment and renovation expenditure) if the lease had been sold during the stipulated period,
 - v) Plaintiff subsequently paid to the defendant a sum of \$ 39,420.00,
 - vi) Two adjacent lands to this lease lands were taken on lease from the defendant by two other sister companies of the plaintiff company,
 - vii) Those leased also had the special conditions mentioned herein before,
 - viii) All three land leases have been sold together,
 - ix) During the transaction on 18-11-2021 plaintiff in writing requested the defendant to apply the special conditions aforementioned to their leases,
 - x) Defendant their letter dated 08-02-2022 refused the plaintiff's request.
8. As per the request made by the counsel for the plaintiff, Mr. Benjamin Seduadua , the managing director of the plaintiff company who gave evidence in MBC 67/ 2022 case is considered as evidence given in this case as well.

9. The witness for the plaintiff stated that he has been running the company since October 1999. It owns hotels and runs water sports. Plaintiff company is a subsidiary of Rondavu Beach Resort Limited and the witness is the Managing Director of the mother company as well. Mother company runs the resort and hotel accommodation. Under the valuation of 2014, the market value of the resort is around 4.2 million dollars. In the valuation, three companies mentioned. Those are: Rondavu Beach Resort Limited (the mother company), plaintiff company and first Divers Limited. The witness found the land in 1999 and obtain the original lease from TLTB (defendant) and started business in October 1999. He had put lot of hard work on it. First, they cleared the land, got the approvals and then started building accommodation. Approximate cost in acquiring the original lease \$ 200,000.00 and that's only for paperwork, excluding buildings. At the time the land was originally leased, it was a bare land. They had to get all the approvals, clean up the land and building on it. They had to use machinery and manpower to develop the property. Three Bure's and a dormitory was built for accommodation and also in the main building of the resort consisting restaurant and entertainment area had been built. Witness as the managing director did all these things. There was an English language school run in the resort for the student who come and accommodate in the resort. The resort situated on the beach front, and they had to make developments in order to facilitate boats and yachts to dock there. They had to hire excavators to excavate the beach to have a marina bay. The block of land the resort situated had three different leases for three parts of the whole land. Witness submits to the court the lease for Saltwater Sports Limited. (Marked as 'Plaintiff Ex 04'). It is a special tourism lease for tourism purpose. They are relying on the terms of the lease. Plaintiff requested numerous times the defendant to be abide by their terms. They wrote a letter to the ministry as well. The defendant declined their request by a letter. (a copy Marked as "Plaintiff Ex 02"). Witness authorized to issue a cheque to pay the lessor. (Photocopy of the cheque marked as " plaintiff Ex 05"). It was issued by Mr. Isimeli Keteca. The leases on the plaintiff company and Saltwater Sports Company had different guidance but they have same tourism terms. The evidence given in this case is also the same for the other case. In 2015 they (defendant) allowed to establish a chicken farm next door. In 2020 with covid 19 plaintiff had only losses. Lease had to pay, and they kept increased the lease. When plaintiff had the opportunity to sell it , they sold it with losses. Witness just wanted to take something after working so hard from nothing. Plaintiff had sold the resort for 1.2 million dollars. Original market value was 4.2 million dollars.

Analysis

10. I now analyze the above evidence to ascertain whether the prayer to the statement of claim has been proved to the standard of proof. First prayer of the plaintiff that

an order for refund the monies (\$ 39,420.00) that the plaintiff paid to the defendant as the charge fee upon the sale of lease rights. I find no evidence adduced by the plaintiff in justifying such claim.

11. "Special conditions" of the iTaukei lease No 32671 (marked in evidence as Pl. Ex 04) states as follows:

" a) (i) if the sale takes place any time within 10 years of the date of commencement of this lease, a sum equivalent to twenty per cent (20%) of the total consideration received by the lessee from such alienation of the said lease or transfer of shares less capital investment and renovation expenditure incurred by the lessee at any time during the term of the lease. This payment shall also be applicable in the event of a sale on any sub-lease. This payment shall also be applicable in the event of a sale on any sub-lease created out of this Lease by the lessee to a third party within 10 years from the date of commencement of this lease."

12. In their reply letter (marked as Pl. Ex 02) the defendant states as follows:

3. The investment made by the companies to develop and operate the leases as explained in your letter are part and parcel of the tenant obligation in a lease. TLTB and the landowners cannot be held liable and shall be kept indemnified from any cost, expenses, losses, or risks incurred or borne by the lessee for the development of the leases. This was the purpose of the lease.
4. Further, the total sale consideration for the respective leases are deemed as the final market value of the respective leases at the final date of negotiations agreed by the parties and having also taken in to account the current economic situation and the impact to the tourism industry and the national economy.
5. TLTB had maintained its position that the charge shall be calculated on the total sale consideration and the settlement proceedings were concluded with cheques received from MIQ Lawyers acknowledge. Please find enclosed the receipts for your information and record.
6. The request to review the total charge on sale consideration from \$168,000.00 to \$ 20,000.00 is therefore declined."

13. In considering the above evidence, it is clear that the plaintiff failed to justify his claim to refund the charged fee upon the sale of the leases. On the contrary, it was charged as per the special conditions of the leases. I therefore hold that the plaintiff has failed to prove the above prayer.

14. Now I deal with the prayer on special damages. To consider future losses that would incur, plaintiff firstly established that those were due to the action of the

defendant. In this case, plaintiff had voluntarily decided to sell the lease, due to macro and micro economical constrains. Thus, there is no liability cast upon the defendant on the plaintiff's said decision.

15. In case of **Broadbridge v Maka** [2001] FJLawRp 97; [2001] 1 FLR 389 (7 November 2001) Byren . J held that:

"Damages - General Principles

As long ago as 1880 Lord Blackburn said in Livingstone v Raw Yards Coal Co. (1885) App. Cas 25, 39 quoted with approval by Lord Scarman in Lim Poh Choo v Camden and Islington Area Health Authority (1980) AC 174 at 187:

"Compensation should as nearly as possible put the party who has suffered in the same position as he would have been in if he had not sustained the wrong."

It has since been approved in numerous other cases since 1980. In British Transport Commission v Gourley (1955) 3 All ER 796 at p.808C Lord Reid said:

"A successful Plaintiff is entitled to have awarded to him such a sum as will, so far as possible, make good to him the financial loss which he has suffered, and will probably suffer, as a result of the wrong done to him for which the Defendant is responsible." (Emphasis added)

16. In a High Court appeal case, **Raviravi Sawmilling & Timber Merchants Co Ltd v Ram** [2020] FJHC 406; HBC41.2017 (5 June 2020), His Lordship Mansoor J. cited an Australian case on assessing the general damages as follows:

"The High Court in Broadbridge v Attorney General of Fiji (which decision was appealed to the Supreme Court) referred to the decision in Wells v Wells which quoted the words of Stephen J in the decision of the High Court of Australia in Todorovic v Waller 1981] 150 CLR 402 at pages 427-428 ; "The Law entitles these plaintiffs to compensation for their losses and outgoings. In Barrell , I cited those authorities which, more than a hundred years ago, established and have ever since affirmed the cardinal principle of such compensation: that a Plaintiff is entitled to such compensation as will, as nearly as may be, make good the financial loss which he has suffered and will probably suffer in the future. Once liability has been established and the facts relevant to damages have been found it is then for the courts to give effect to that principle in their assessment of damages for economic loss. While there may be no one exclusive method of assessment appropriate to every circumstance, there is but one criterion by which the adequacy of any particular method may be judged: it is whether or not the result of the assessment fairly makes good the financial loss incurred." (Emphasis added).

17. When consider the evidence placed before this court by the plaintiff, there is no evidence to establish the liability of the defendant for considering the general damages. I therefore hold that the plaintiff is not entitled for general damages. In view of the said, the question of interest and cost do not arise.

Findings

18. Plaintiff has not formally proved their case against the defendant on balance of probabilities that the defendant is liable to pay a sum of \$ 39,420.00 as a refund of the charge of fee upon sale and the general damages.

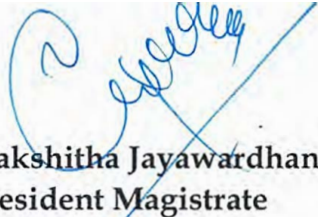
Orders of the court

19. Therefore, the orders of this Court are as follows:

- a) Statement of Claim of the Plaintiff is refused, and the Writ of Summons is dismissed,
- b) No order as cost.

20. There is a right to appeal to the High Court in pursuant to the Magistrates Court Rules 1945.




Lakshitha Jayawardhana
Resident Magistrate

At Suva, on this 04th day of November 2022