IN THE SUPREME COURT OF FIJI AT SUVA
ON APPEAL FROM THE FIJI COURT OF APPEAL

CIVIL APPEAL NO. CBV0006 OF 1994
(Fiji Court of Appeal Civil No.3 of 92)

BETWEEN SURESH SUSHIL CHANDRA CHARAN
ANURADHA CHARAN

Appellants

A N D: SUVA CITY COUNCIL

Respondent

Coram: The Hon. Sir Timoci Tuivaga, President
The Right Hon. Lord Cooke of Thorndon
The Hon. Sir Anthony Mason

Hearing: 4 September 1996

Counsel: Appellant in person
R. Gopal for Respondent

Judgment: 12 September 1996

JUDGMENT OF THE COURT

By an application filed on 27 November 1995 the appellants seek to have set aside this Court's judgment delivered on 24 November 1995 and ask for a rehearing of the appeal.

A court of final appeal may set aside a judgment of its own in rare and exceptional cases. The relevant principles were stated as follows by Mason C.J. in Autodesk Inc. v. Dyason (No.2) (1993) 176 C.L.R. 300, 302:

> "These examples indicate that the public interest in the finality of litigation will not preclude the exceptional step of reviewing or rehearing an issue when a court has good reason to consider that, in its earlier judgment, it has proceeded on a misapprehension as to the facts or the law. As this Court is a final court of appeal, there is no reason for it to confine the exercise of its jurisdiction in a way that would inhibit its capacity to rectify what it perceives to be an apparent error arising from some miscarriage in its judgment. However, it must be emphasized that the jurisdiction is not to be exercised for the purpose of re-agitating arguments already considered by the Court; nor is it to be exercised simply because the party seeking a rehearing has failed to present the argument in all its aspects or as well as it might have been put. What must energe, in order to enliven the exercise of the jurisdiction, is that the Court has apparently proceeded according to some misapprehension of the facts or the relevant law and that this misapprehension cannot be attributed solely to the neglect or default of the party seeking the rehearing. The purpose of the jurisdiction is not to provide a backdoor method by which unsuccessful litigants can seek to re argue their cases."

Having heard full argument from Mr Charan in support of the application, this Court is satisfied that it does not fall within those principles.

The case concerns damages for an unlawful distress. On an appeal from the award of the trial Judge, Scott J., the Court of Appeal increased his award of exemplary damages from $1,000 to $3,000 (with interest) but otherwise left his total award of $14,461 (with interest) standing. In our own judgment of 24 November 1995 a further appeal was dismissed. We said that we

had been unable to detect any significant error of law or fact on which the Supreme Court could properly interfere. We also cited a passage from the speech of Lord Du Parcq in Monarch Shipping Co. Ltd. v. A/B Karlshamns [1949] All N E.R.1, 19, to the effect that the assessment of damages is in the end a question of fact and that there is no absolute general rule applicable to all cases.

In his argument before this Court on 4 September 1996 Mr Charan said that he accepted Lord Du Parcq's observations. Nevertheless he contended that some applicable principles had not been followed in the Courts below.

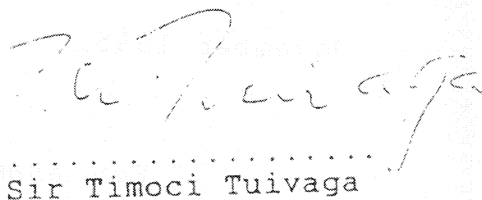
It became clear that Mr Charan was attempting to re-argue arguments that had been presented by him to this Court in November 1995.

For example, in the forefront of his argument on 4 September 1996 Mr Charan put a submission that in this case the value of chattels should be assessed at the date of judgment, not at the date of conversion. There was nothing new in this submission. The Court of Appeal had rejected it by pointing out that the Judge had awarded substantially the full value claimed in the statement of claim and that the notice of appeal had not specified that this was wrong. We note that the total value alleged in the statement of claim was $13,461.83 and that the award on this head was $13,461.00. The statement in our previous

judgment that we could detect no significant error of law or fact entitling as to intervene applied to this part of the Court of Appeal's judgment as well as all other parts.

Our previous judgment concluded by indicating that we did not consider that any injustice had been done to the appellants. The further argument has not altered our opinion. No grounds for re-opening the case have been shown. The application must be dismissed with costs.

It is a fundamental principle that there must be an end to litigation. *Interest reipublicae ut sit finis litium.* The appellants have had their day in Court - indeed many days in all in three Courts - and they must accept that this case is at an end.



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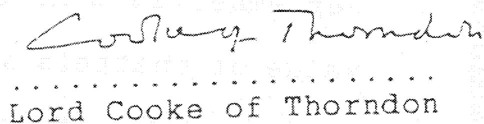

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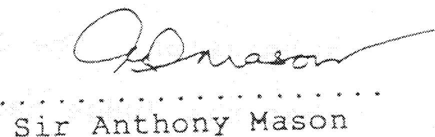

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Sir Anthony Mason

Solicitors:

Office Solicitor, Suva City Council, Suva, for Respondent