IN THE SUPREME COURT OF FIJI
[CIVIL APPELLATE JURISDICTION]

Civil Petition No: CBV 0011 OF 2022
[Court of Appeal ABU 95 of 2018]
[High Court HBC 92 of 2012]

BETWEEN : **G. P. REDDY COMPANY LIMITED**

Petitioner

AND : **PAC INVESTMENTS & DEVELOPMENTS LIMITED**

Respondent

Coram : The Hon. Mr Justice Anthony Gates, Judge of the Supreme Court
The Hon. Mr Justice William Calanchini, Judge of the Supreme Court
The Hon. Mr. Justice Terence Arnold, Judge of the Supreme Court

Counsel: Mr R. Goundar for the Petitioner
Mr V. C. Naidu with Mr V. V. Sharma for the Respondent

Date of Hearing: 11 April, 2023

Date of Judgment: 26 April, 2023

JUDGMENT

Gates, J

1. I have read the judgment of Calanchini J in draft. I am in full agreement with it, its reasons and orders.

Calanchini, J

2. This litigation has its origins in a Memorandum of Agreement entered into between the Petitioner G.P. Reddy & Company Limited (Reddy) and Lautoka Land Development Ltd (LLD) dated 11 September 1992. The Respondent in this Petition was not a party to that agreement.

3. LLD was the holder of an Approval Notice of Lease, issued by the Director of Lands under Reference LD 4/7/3305, of State Land described as Stages II and III and known as Navutu Industrial Subdivision at Navutu, Lautoka. Under the agreement Reddy agreed to purchase and LLD agreed to complete the development of the land in Lot 5 SO 2502 comprising an area of 5831 square metres (the property). The 5831 square metres was part of the land over which LLD held the Approval Notice of Lease. The purchase price of $170,000.00 was to be paid in three stages that were identified in the agreement.

4. Reddy made a part payment of $51,950.00 by way of deposit. By 1994 LLD had carried out part of the required works, but had not completed the development, when the company was wound up by the High Court. The creditor, Fiji Development Bank, appointed Brian Murphy as receiver and manager.

5. On 20 February 1996 the receiver wrote to the lessees (including Reddy) who had purchased leases in the subdivision. The receiver indicated in the letter that the subdivision would be completed in accordance with the agreements with LLD for an additional 20% of the purchase price. It would appear that most purchasers accepted the offer but Reddy did not. This offer is outlined in paragraph 9 of the Deed of Settlement. It is clear that the receiver is referring to the obligation to complete the development of the land comprised in Lot 5 SO 2502 being an area of 5831 sq. metres set out in paragraph 1 of the Memorandum of Agreement. In paragraph 5 of the Deed of Settlement this same description of the land is described as "*the property*." It must be recalled that the Memorandum of Agreement was not a sale and purchase agreement as such.

6. Subsequently the receiver attempted a second time to conclude the matter with Reddy by forwarding a draft sale and purchase contract. However, Reddy commenced proceedings in the High Court at Lautoka (HBC 418 of 1996) on 17 December 1996 seeking the following relief:

(a) an order that LLD be compelled to complete the subdivision and developments for the issue of an approval notice; and
(b) a declaration that Reddy is the lessee and entitled to a lease over the property (ie, the 5831 sq metres that was the subject of the Memorandum of Agreement).

7. After the pleadings had been delivered, but before the trial of the action, the parties agreed to settle the proceedings. A deed of settlement dated 11 April 2007 was signed by Reddy, Mr Bruce Sutton for and on behalf of the receiver and the Fiji Development Bank.

8. The Deed contained three relevant definitions. First, it defined "the property" as the 5831 sq metres that was the subject of the Memorandum of Agreement (clause 5). Second, it defined the "the action" as the proceedings in HBC 418 of 1996I (clause 11). Third, it defined "the site" as the 2574 sq metres comprised in Lot 5 SO 2502 Navutu Industrial Estate (part of) as described in CL 13851 (clause 17).

9. The Deed set out the background to the dispute and then in clause 16 stated that the parties had agreed to compromise the action and settle their differences in the terms of the Deed. Pursuant to the Deed, Reddy agreed to pay the settlement sum (defined in the Deed as FJD $82,000.00) and upon payment of that amount and the withdrawal of the action, the receiver of LLD and the Bank would accept the settlement sum in full and final settlement and satisfaction of the dispute and of all and any further claims whether existing or contingent that Reddy presently then had including the action or would have in the future with the receiver directly or indirectly in respect of the property and or the site and the action.

10. Pursuant to clause 22 of the Deed, Reddy was required to file a Notice of Discontinuance in the civil action HBC 418 of 1996. The receiver was required to arrange to hand over a transfer of the site (ie, the 2574 square metre lot). In a nutshell the effect of the Deed was that Reddy had settled its claims by accepting a lease for 2574 square metres (the site) instead of a lease for 5831 square metres (the property) upon payment of a further $82,000.00.

11. On 21 September 2007, the Court made a consent order that reflected the Deed of Settlement. In particular, order (i) provided for the payment of the settlement sum and went on to say that the "said sum is full and final settlement and satisfaction of the dispute in this action and of all and any further claims whether existing or contingent that [Reddy] has now including this action and will have in the future with the [receiver] directly or indirectly in respect of the subject property and or the site subject to this action". On 24 June 2008, the receiver transferred its estate and interest in Lot 5 (2574 square metres) to Reddy. This transfer was described as being pursuant to the Court order of 21 September 2007.

12. Under the Deed of Settlement Reddy abandoned any further claim it may have had under the 1992 Memorandum of Agreement. Reddy accepted an approval lease notice for 2754 square metres and abandoned the balance of 3257 square metres. When the present proceedings began, Reddy occupied the lease comprising 2574 square metres and the abandoned portion of 3257 square metres comprised a separate lease issued to PAC Investments and Development Limited (the Respondent).

13. In the present proceedings Reddy sought an order that it was entitled to a separate lease over the disputed area of 3257 square metres. PAC had been issued with a lease for the disputed land in June 2012. Reddy had been issued a lease for 2754 square metres on 24 June 2008. The core issue to be decided at the trial was the claim by Reddy for 3257 square metres more, for which the PAC claimed to be the proper lessee.

The High Court proceedings in the present case

14. The Judge observed that the documents to which reference has been made in the judgment were tendered at the trial with no objection by the parties. He also noted that the undisputed contents therein were significant in determining the issues in dispute. He referred to the majority of the oral evidence as being "*irrelevant*" and not to the point in issue.

15. The Judge dismissed Reddy's claim and declined to award damages for loss and damage claimed by PAC in its counterclaim. He did award general damages to be assessed by the Master. He awarded punitive damages to PAC in the amount of $30,000.00 together with costs fixed summarily at $15,000.00.

Court of Appeal

16. Reddy filed a timely notice of appeal against the orders made by the High Court relying on some 24 grounds of appeal. Not surprisingly the Court of Appeal found it unnecessary to consider the appeal on that basis.

17. The Court of Appeal dismissed Reddy's appeal from the High Court's decision dismissing his claim for a lease over the disputed area of 3257 square metres. The Court's judgment adds nothing new in terms of the reasons for dismissing Reddy's appeal. The Court concluded that the Judge had erred by ordering a hearing before the Master. The Court set aside the order for punitive damages and reduced the costs awarded in the High Court to $5,000.00. In addition the Court awarded costs to PAC in the sum of $5,000.00 for the appeal.

Supreme Court

18. Reddy filed a timely petition for leave to appeal the decision of the Court of Appeal. The principal issue raised by the grounds of appeal in paragraph 4 of the petition is again the Deed of Settlement.

19. The issues that fall for consideration in this Petition have been extensively examined in the earlier part of this judgment. There is nothing to be gained by repeating those observations.

20. In the hearing before this Court, Counsel for the Petitioner took the Court to various parts of the Court Record to attempt to demonstrate that the Deed of Settlement, when read with the Memorandum of Agreement and various other documents, together with the oral evidence, did not mean what it said. An attempt was made to demonstrate that Reddy did not intend, and for that matter, could not have intended the consequence that clearly flow from the words used in the Deed of Settlement. Towards the end of his oral submissions Counsel conceded that the approach to be applied when determining the proper construction of a written agreement is the objective approach. It is now well settled that it is the parties expressed intentions (which may not necessarily be the same as their actual intentions) that are relevant to determining the meaning of a contractual term. Apart from terms defined in the agreement, the Court considers what a reasonable person in the position of the parties would have understood the relevant term to mean. In **Arnold –v- Britton and Others** [2015] UKSC 36 Lord Neuberger P explained at para 20:

> *"The purpose of interpretation is to identify what the parties have agreed. Not what the court thinks that they should have agreed _ _ _. It is not the function of a Judge to relieve a party from the consequences of his imprudence or poor advice."*

21. For the above reasons, I would refuse leave to appeal on the basis that none of the criteria listed on section 7(3) of the Supreme Court Act 1998 has been met. I would order the Petitioner to pay costs in the amount of $10,000.00 to the Respondent within 30 days from the date of this judgment.

Arnold, J

22. I have read the judgment of Calanchini J in draft and agree with his reasoning and the orders he proposes.

Order:

Leave to appeal is refused.

The Hon Mr Justice Anthony Gates
JUDGE OF THE SUPREME COURT

SUPREME COURT FIJI

The Hon Mr William Calanchini
JUDGE OF THE SUPREME COURT

Hon Mr Justice Terence Arnold
JUDGE OF THE SUPREME COURT