

IN THE HIGH COURT OF KIRIBATI)
CIVIL JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

HIGH COURT CIVIL CASE 85 OF 2007

BETWEEN: NEI RAN ARETA PLAINTIFF

AND: KIRIBATI HOUSING CORPORATION DEFENDANT

FOR THE PLAINTIFF: MR BANUERA BERINA

FOR THE DEFENDANT: MR BIRIMAKA TEKANENE

DATE OF HEARING: 22 JANUARY 2008

ASSESSMENT OF DAMAGES

Mr Berina abandoned several heads of damage claimed in the Statement of Claim. The remaining heads of damage for which claim is made are:-

1. Husband's airfare from Vanuatu to Kiribati in an attempt to get another house.
 2. Items lost or damaged on removal from the house repossessed
 3. Rent in Fiji for the family
 4. Overpayment of rent on house repossessed
 5. General damages
1. After hearing of the repossession Nei Ran had her husband return to Tarawa to get other accommodation. She estimated the fare each way at \$1,100. Mr Tekanene did not challenge the estimate. I allow \$2,200.

2. The plaintiff had made two lists of items which the defendant either lost after repossession or damaged. Mr Tekanene did not challenge the items (indeed he could not as the defendant had kept no list itself) but suggested faintly that the plaintiff had assessed each item at too much. The amount claimed looks to be modest. I shall allow the claims in full. They are:

Lost items	\$920.00
Damaged	<u>\$955.00</u>
	\$1,875.00

3. Nei Ran said it was cheaper in Fiji for her to rent a house for the family than on South Tarawa. The claim is for the equivalent of the rent for six months, from January to June 2007. The rent paid was FJ\$550 per month: a total of FJ\$3,300. Mr Tekanene did not challenge the amount but submitted that the family should have been able to find somewhere to live here, either with relatives or renting. Nei Ran said all their relatives could offer, because other members of the extended family were with them, was a kiakia. That was not enough for the four of them – herself, her husband and two children. The renting of the house in Fiji was reasonable.

The rate of exchange today, 22nd January, given on the internet by OANDA converts FJ\$3,300 into AU\$2,455.39. Rates of exchange vary from day to day. Variation since last year may have favoured either plaintiff or defendant. It is impossible to make precise calculation. I shall allow \$2,450.

4. The plaintiff gave evidence during the hearing on liability that repossession was some time in January 2007. Yet rent payments continued to be deducted from her salary as an officer of the Ministry of Commerce until the end of March. \$24.95 was deducted fortnightly. Assume the house to have been repossessed in the middle of January: overpayment for 10 weeks, five fortnights. I allow \$125.00.
5. General Damages. The family has not been able to find another house on South Tarawa nor have they been allocated one by Housing despite the plaintiff, as an officer of the Ministry of Commerce, being entitled to one. Instead they have bought land and the plaintiff's husband is building a house. In the meantime the family has been split up. The plaintiff and her husband are on a kiakia on South Tarawa. The two children have gone to live on Abemama with grand parents. A most unsatisfactory situation, much inconvenience and upset.

I return to the foundation of the rule on damages in contract, the judgment of Baron Alderson in *Hadley v Baxendale* (9 Exch 341, All England Reprint, Volume 1843-1860 @ 461). Alderson B stated the proper rule:-

Where two parties have made a contract which one of them has broken the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered as either arising naturally, i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it.

The loss, upset and inconvenience arose naturally from the breach of contract by the defendant. I assess general damages at \$1,500.

In summary:

1.	Husband's airfares	\$2,200.00
2.	Items lost or damaged	\$1,875.00
3.	Rent in Fiji	\$2,450.00
4.	Overpayment of rent	\$125.00
5.	General Damages	<u>\$1,500.00</u>
		\$8,150.00

There will be judgment for the plaintiff for \$8,150.00.

Dated the 24th day of January 2008

THE HON ROBIN MILLHOUSE QC
Chief Justice