

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 210 of 2016

BETWEEN : **FAIZAL RAZAAK KHAN**

PLAINTIFF

AND :

RUPESH CHAND

DEFENDANT

Appearances: Natasha Khan & Associates for Plaintiff
 Rupesh Chand for Defendant
Date of Formal Proof: 26.04.2018
Date of Ruling: 03.05.19

R U L I N G

BACKGROUND

1. The plaintiff filed his statement of claim on 05 October 2016. The statement of defence was filed on 24 November 2016 and the Reply, on 03 February 2017. Order in Terms of the Summons for Directions was made on 07 March 2017. On 03 April 2017, the plaintiff filed his List of Documents. The defendant has not filed any such List. However, on 08 May 2017, AC Law filed a *Summons for Leave To Withdraw As Solicitors* for the defendant. The affidavit in support sworn by Ravneet Charan, a solicitor in the above firm,

deposes that he has tried on numerous occasions to contact the defendant to comply with the List of Documents, but to no avail. Furthermore, the defendant owes the firm some legal fees which he has been evading.

2. Later however, before the Master on 26 May 2017, AC Law sought and obtained leave to withdraw the Summons and on the same day, filed the defendant's List of Documents. The Pre-Trial Conference Minutes was filed on 12 September 2017 and Copy Pleadings on 19 September 2017 together with an Order *34 Summons To Enter the Action For Trial*. Order In Term was granted by the Master on 27 September 2017.
3. When the matter was called before me on 07 December 2017, there was no appearance by the defendant's counsel. The matter was then adjourned to 02 February 2018 but there was still no appearance by the defendant. I then directed that a NOAH be sent to AC Lawyers and adjourned the matter to 15 February 2018. NOAH was sent to AC Lawyers on 02 February 2018 returnable 15 April 2018. When the matter was called on 15 February 2018, there was no appearance by or on behalf of the defendant. I then adjourned the matter to 26 April 2018 for formal proof.
4. Below is the evidence that the plaintiff gave in Court on 26 April 2018.

EVIDENCE

5. The plaintiff is the registered proprietor of all that piece of land comprised in Lot 1 on D.P 10512 at Waiqumu and Cakova containing an area of 4134 square meters. The defendant is a Building Contractor.
6. On 28 November 2013 the plaintiff and the defendant entered into a General Building Contract (PEX-1). Under the said contract, the Contractor was to commence construction on 2 December 2013.

7. The contract also stipulated that construction was to be completed in six (6) months from the time of commencement of construction. The construction was to be undertaken as per the approved plans and specifications and the defendant was then to handover possession to the plaintiff on 30 July 2014.
8. On 20 July 2014, the defendant requested an advance of \$35,000 for the purchase of building materials. This according to the plaintiff, he paid to the defendant. However, the defendant did not buy the materials.
9. The plaintiff also made another payment of \$9,000 to the defendant by cash. However, this too remains unaccounted for.
10. The defendant did not complete the works and the plaintiff, he had to hire another contractor to complete the work.
11. According to the plaintiff, the defendant simply abandoned the project and left without returning. He tried to contact the defendant several times and waited for some two months or so but to no avail.
12. At some point, the plaintiff accosted the plaintiff to reimburse him with the \$30,000 paid. The defendant did write a cheque to the plaintiff to the sum of \$30,000. This, however, was dishonoured by the Bank.
13. Clause 12 of the contract stipulates that the contractor had to pay the plaintiff \$100 per day for everyday the contract is overdue. The project was to have been completed by July 2014. The plaintiff said he finally had to complete construction in September 2015.
14. The plaintiff claims \$30,000 for the dishonoured cheque and interest from 30 July 2014. He also seeks liquidated damages of \$100 per day from 30

July 2014 to September 2015 as well as general damages for extra costs incurred in having to look for other contractors which he did himself. In addition, he seeks costs on a solicitor – client basis. The plaintiff says he had sent a Legal Demand Notice through his solicitors but there was no response from the defendant. The plaintiff said that he never agreed to an extension of time for the completion of the contract. In total, the plaintiff claims \$41,000 in liquidated damages made up as follows:

- (i) \$35,000 advance
- (ii) \$9,000 advance

15. He also claims costs of \$20,000. I think this is rather excessive.

ORDERS

- (i) Judgement to the plaintiff in the sum of \$41,000-00 (forty-one thousand dollars only) in special liquidated damages.
- (ii) Costs which I summarily assess at \$3,500-00.



A handwritten signature in black ink, appearing to be "Anare Tuilevuka", written over a horizontal dotted line.

Anare Tuilevuka
JUDGE
Lautoka