

**IN THE HIGH COURT OF FIJI AT ALBASA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 06 of 2017**

**BETWEEN**

**DIGMACH CIVIL CONTRACTORS LIMITED**, a limited liability company having its  
registered office at Lovu, Lautoka.

**PLAINTIFF**

**AND**

**VITI VANUA HOLDINGS LIMITED**, a limited liability company having its registered  
office at 1<sup>st</sup> Floor, Dayal Building, Main Street, Labasa.

**DEFENDANT**

|                         |   |   |
|-------------------------|---|---|
| <b>Counsel</b>          | : | Mr. R. Nandan for Plaintiff<br>Mr. A. Kohli for Defendant           |
| <b>Dates of Hearing</b> | : | 13 <sup>th</sup> November, 2017 and 29 <sup>th</sup> November, 2017 |
| <b>Date of Judgment</b> | : | 31 <sup>st</sup> January, 2018                                      |

## JUDGMENT

- [1] The plaintiff came to court seeking to recover \$64,609.32 from the defendant. It is averred in the statement of claim that the defendant hired from the plaintiff plant, machinery and labourers and also that the plaintiff supplied to the defendant boulders and spalls upon instructions of the defendant.
- [2] The particulars of invoices issued by the plaintiff are as follows;

| Date       | Invoice No. | Amount              |
|------------|-------------|---------------------|
| 06/07/2010 | 0708        | \$18,209.20         |
| 21/07/2010 | 0709        | \$46,397.51         |
| 09/09/2010 | 0710        | \$38,560.68         |
| 20/09/2010 | 0711        | \$62,725.77         |
| 29/10/2010 | 0712        | \$73,076.25         |
| 20/11/2010 | 0713        | \$9,946.80          |
| 16/12/2010 | 0714        | \$23,078.22         |
| 16/12/2010 | 0715        | \$15,110.80         |
| 17/03/2011 | 0716        | \$15,110.80         |
|            |             | <u>\$302,216.03</u> |

- [3] The defendant has made certain payments, the details of which are as follows;

| Date       | Payments            |
|------------|---------------------|
| 08/02/2010 | \$10,000.00         |
| 08/03/2010 | \$8,209.20          |
| Chqs 5956  | \$46,397.51         |
| 30/08/2010 | \$5,000.00          |
| 17/09/2010 | \$38,000.00         |
| 22/09/2010 | \$10,000.00         |
| 15/10/2010 | \$20,000.00         |
| 28/10/2010 | \$15,000.00         |
| 11/09/2010 | \$5,000.00          |
| 16/12/2010 | \$20,000.00         |
| 17/12/2010 | \$20,000.00         |
| 01/10/2011 | \$20,000.00         |
| 23/01/2011 | \$10,000.00         |
| 02/03/2011 | \$10,000.00         |
|            | <u>\$237,606.71</u> |

- [4] In the statement of defence the defendant has admitted paragraphs 1 to 4 of the statement of claim. The above details of the invoices and the payments made by the defendant are pleaded in paragraphs 3 and 4 of the statement of claim. Therefore, there is no dispute that the value of the invoices issued by the plaintiff was \$302,216.03

and out of which the defendant had paid 237,606.71. At the pre-trial conference also the defendant has admitted these facts.

- [5] It is the position of the defendant on Praveen Sharma (it was agreed at the trial this name should be read as Praveer Sharma) on behalf of the plaintiff offered to accept \$15,000.00 which the defendant accepted. He defendant and Praveer Sharma had then entered into an agreement 06<sup>th</sup> June, 2014 acknowledging that the defendant company had only to pay \$15000,00 to the plaintiff and the plaintiff would not made any further claim.
- [6] In his brief testimony the Managing Director of the plaintiff company denied having authorised Praveer Sharma to collect any debt on his behalf and that he was not aware of any agreement between the defendant and Praveer Sharma. He admitted that Praveer Sharma came to see him. It was his evidence that Praveer Sharma introduced him as a bailiff and he discussed the debt due from the defendant company but denied authorising him to act on his behalf.
- [8] On behalf of the defendant company it Managing Director testified at the trial. It is his evidence that he knew Praveer Sharma and he called the witness one day and told that he was a bailiff and wanted to discuss about this matter. He had informed the witness that the Director of Digmach was sick and was going to India. The witness had met Praveer Sharma and after discussions reduced the amount due to the plaintiff to \$40,000.00. The witness tendered in evidence the letter sent by Praveer Sharma on 06<sup>th</sup> December, 2012 informing that they agree to settled the outstanding amount at \$40,000.00, as "D1" and the payment receipt and vouchers marked as "D2A" to "D2D".
- [9] Praveer Kumar Sharma testified that he came to know the plaintiff when he went to Lautoka and that he offered his services to them to recover loans. The witness has met one Mr. Prabhakaran, the Managing Director of Digmach and he had asked the witness to recover \$64,000.00 due from the defendant. He had promised to pay the witness 10% of the amount recovered. After a week or so Mr. Prabhakaran had met the witness at the witness's residence and had paid him \$500.00. The witness said further that he made arrangements for monthly payments. In the meantime Mr. Prabhakaran had fallen ill and had gone to India for treatment. He thereafter had called the witnesses and the witness had deposited \$2,200.00 to his account. Later Mr. Prabhakaran had requested the witness to recover whatever he could and the witness

had decided to recover \$15,000.00 and entered into an agreement with the defendant which was tendered in evidence marked as "D4". It was revealed in the evidence of this witness that the plaintiff had filed an action in the Magistrate's Court of Nasinu to recover \$13,034.00 from this witness.

- [10] When the learned counsel for the defendant attempted to lead in evidence the contents of the statement of claim filed in Civil Action No. 84 of 2016 the learned counsel for the plaintiff objected to it on the ground that it was not put to the plaintiff in cross-examination. The learned counsel relied on the decision in **Browne v Dunn** (1893) 6 R 67 where it was held:

If in the course of a case it is intended to suggest that a witness not speaking the truth upon a particular point, his attention must be directed to the fact by cross-examination showing that that imputation is intended to be made, so that he may have an opportunity of making any explanation which is open to him, unless it is otherwise perfectly clear he has had full notice beforehand there is an intention to impeach the credibility of his story, or per (Lord Morris) the story is of incredible and romancing character.

- [11] The document sought to be tendered by the defendant was the statement of claim filed by the plaintiff in the civil action No. 84 of 2016. The main issue in this matter is whether the witness Praveer Kumar Sharma was given the authority to act on behalf of the plaintiff to recover the money due from the defendant. The fact that the said action was instituted against Praveer Kumar Sharma is not disputed by the defendant. The counsel's objection was against leading in evidence the contents of the statement of claim. It is important to note that once a document is tendered in evidence its contents automatically become part of the evidence. The statement of claim was prepared and filed on behalf of the plaintiff on its instructions and it was aware of the defence taken up in that matter. The purpose of tendering the statement of claim filed in the earlier matter is to establish that there was an agency agreement between the plaintiff and the defendant and not to impeach the credibility of the plaintiff's witnesses. However, once the defendant establishes his case the position taken up by the plaintiff will automatically be contradicted but it does not always affect the credibility of the witnesses of the plaintiff. For these reasons I am of the view that the *Browne v Dunn* rule cannot be applied in this instance.

[12] The learned counsel for the defendant could not successfully challenge the accuracy of the evidence given by Praveer Kumar. He cross-examined the witness on the basis that there was no appointment in writing. The law does not require that an agency must be created by writing. Even if the admission contained in the statement of claim filed in Civil Action No. 84 of 2016 that Praveer Kumar was engaged to collect the debt is ignored by the court the uncontradicted evidence of the witness for the defendant and Praveer Kumar is sufficient for the court to conclude that the Praveer Kumar acted as the agent of the plaintiff to collect the debt from the defendant. It is also relevant to state that if the plaintiff did not authorise provide Praveen Kumar to act as his agent there was no necessity to give Praveen Kumar the information such as the name of the debtor, the amount due from him etc. In the circumstances the only reasonable conclusion the court can arrive at is that Praveen Kumar Sharma has had the authority to act for and on behalf of the plaintiff to collect the money from the defendant and the plaintiff is bound by the agreement entered into between the defendant and Praveer Kumar on 16<sup>th</sup> June, 2014 (D4) whereby the parties agreed to reduce the amount due to the plaintiff to \$15,000.00.

[14] Praveer Kumar Sharma admitted in evidence that he received this \$15,000.00. Therefore, the plaintiff's action must necessarily fail.

[15] For the reasons aforementioned the court makes the following orders.

#### ORDERS

- (1) The plaintiff's action is dismissed.
- (2) The plaintiff shall pay the defendant \$2000.00 as costs (summarily assessed) of this action.



31<sup>st</sup> January, 2018

  
Lyone Seneviratne

JUDGE