

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Action No. 326 of 2009

BETWEEN : **B. PRASAD & SONS LIMITED** a limited liability
company having its registered office at Suva in Fiji.

PLAINTIFF

AND : **JOE MYUNG YOO** C/- KOREAN MOTORS CO. LTD a
limited liability company having its registered office at
Kohli Singh, 77 Cumming Street, Suva, Fiji

DEFENDANT

BEFORE : **Hon. Justice Kamal Kumar**

COUNSEL : Mr D. Prasad for the Plaintiffs

: Mr V. Maharaj for the Defendant

DATE OF JUDGMENT : 31 March 2016

JUDGMENT

Introduction

1. On 5 October 2009, Plaintiff filed claim against the Defendant seeking judgment for the sum of \$73,466.35 plus interest and costs.
2. On 22 October 2009, Defendant filed Statement of Defense denying the claim and seeking Order to dismiss Plaintiff's claim.
3. On 10 November 2009, Plaintiff filed Reply to Defense.
4. On 31 March 2010, Plaintiff filed Summons for Direction and Order in terms of the Summons for Direction was made on 19 April 2010.
5. Plaintiff filed its Affidavit Verifying List of Documents on 30 April 2010, whereas Defendant filed his Affidavit Verifying List of Documents on 13 April 2011.
6. When this matter was called on 23 January 2013, Counsel for the Defendant informed the Court that Defendant has taken the documents from his Solicitors' office and this matter was adjourned to 20 February 2013.
7. On 20 February 2013, Court granted Plaintiff four (4) weeks to file Pre-Trial Conference (PTC) Minutes or file Application to dispense with PTC.
8. On 20 March 2013, Plaintiff filed Application to adopt PTC Minutes prepared by it as PTC Minutes or to dispense with PTC.
9. On 19 April 2013, Defendants current Solicitors filed Notice of Change of Solicitors.
10. On 14 May 2013, PTC Minutes was filed by the Plaintiff.
11. On 15 May 2013, Plaintiff filed Summons to enter this action for trial and on 4 June 2013, this action was set down for trial on 27 and 28 November 2013.

Background Facts

12. On or about 24 January 2005, parties entered into a Sale and Purchase Agreement ("**the Agreement**") pursuant to which Plaintiff agreed to sell and Defendant agreed to purchase properties comprised in Certificate of Title Nos. 22068, 22069, 22070 and 22071 for the consideration sum of \$1,200,000.00 being total purchase price.

13. Defendant by settlement date (on or about 28 April 2005) paid \$1,000,000.00 (One million dollars) to the Plaintiff towards the purchase price and balance sum of \$200,000.00 (Two hundred thousand dollars) was to be paid as follows:-
 - (i) Plaintiff would lease part of the property known as Lot 7 on Deposited Plan No. 5502 comprised in Certificate of Title No. 22068 (**“the premises”**) for five and half years from date of settlement;
 - (ii) Rental for leased premises would be \$3,030.31 (Three thousand thirty dollars and thirty one cents) including Value Added Tax per month;
 - (iii) Plaintiff will not pay the rent but the rental amount would offset the balance purchase price.
14. The Plaintiff had right to sub-lease the premises after notifying the Defendant.
15. Plaintiff leased the premises until 31 May 2016, and sub-leased the premises to Asian Parts (South Pacific) Limited (**“APCO”**) for two years commencing from 1 June 2006 at a rental of \$4,331.25 (Four thousand three hundred thirty one dollars and twenty five cents) per month inclusive of VAT (**“the sub-lease”**).
16. APCO vacated the premises at the end of May 2007.

Documentary Evidence

17. Prior to commencement of trial parties agreed that the documents listed in and annexed to Agreed Bundle of Documents dated 26 November 2013, be marked at Exhibit 1 to 16.
18. During course of trial, Plaintiff tendered copy of undated letter from APCO to Plaintiff and twenty (20) photographs as Exhibits 17 and 18 respectively with Defendant’s consent.

Plaintiff’s Case

19. Plaintiff called Sheetal Prasad, Company Secretary as its only witness.
20. During Examination in Chief, Ms Prasad gave evidence that:-
 - (i) *In 2005, she was involved with Plaintiff Company;*

- (ii) *On 24 January 2005, Plaintiff entered in a Sale and Purchase Agreement with the Defendant for sale of properties comprised in Certificate of Title Nos. 22068, 22069, 22070 and 22071 (Exhibit 1) with the Defendant for consideration sum of One Million Two Hundred Thousand Dollars (\$1,200,000.00);*
- (iii) *The Agreement was signed by Mr Ashok Prasad, Managing Director and herself on behalf of the Plaintiff;*
- (iv) *Defendant paid one million dollars (\$1,000,000.00) towards the consideration sum and balance sum of two hundred thousand dollars (\$200,000.00) was to be offset in terms of clause 1(b) of the Agreement;*
- (v) *Plaintiff occupied Lot 7 as Defendant's tenant from 1st May 2015.*
- (vi) *The Agreement provided that Plaintiff could sub-lease the premises and as such they did sub-lease the premises to APCO for which Plaintiff obtained written consent from Defendant;*
- (vii) *The lease premises consist of an office space and a factory;*
- (viii) *When Agreement was entered, the Defendant, the Real Estate Agent and Carpenter inspected the properties;*
- (ix) *Defendant did not raise any issues regarding the building structure and Plaintiff had no issues when it occupied the building;*
- (x) *As for lease between Plaintiff and Defendant they did not enter into any Lease Agreement because Defendant did not provide any Lease Agreement;*
- (xi) *Plaintiff requested Defendant to provide Lease Agreement but Defendant did not provide one;*
- (xii) *Plaintiff occupied premises for one (1) year;*
- (xiii) *Plaintiff entered into sub-lease in respect to the premises with APCO for a period of two (2) years commencing from 1st June 2006, with option to extend sub-lease;*

- (xiv) *Plaintiff carried out certain repairs to the premises at request of APCO (Exhibit 6);*
- (xv) *APCO vacated premises in May 2007, because of roof leakage and flooding in 2007;*
- (xvi) *She inspected roof leakages and the building;*
- (xvii) *Plaintiff by letter dated 13 February 2007 (Exhibit 10) informed the Defendant about APCO's decision to vacate the premises and requesting Defendant to fix the roof or alternatively to sell the premises to Plaintiff for \$200,000.00;*
- (xviii) *Despite follow ups (Exhibit 11) Defendant did not respond to the letter or fix the roof;*
- (xix) *She approached Defendant, personally but Defendant did not take any action;*
- (xx) *Plaintiff instructed Messrs Lajendra Law to give notice to Defendant which the said Solicitors did on 4 March 2009 (Exhibit 12);*
- (xxi) *From 2007 to 2009, Plaintiffs would visit Defendant to resolve the issue;*
- (xxii) *From June 2007, Plaintiff did not occupy the premises because of unsuitable condition;*
- (xxiii) *Defendant replied to Plaintiff's Solicitors letter through Mr Valenitabua denying claim (Exhibit 13);*
- (xxiv) *On 9 June 2009, Plaintiff wrote to Defendant to repair the premises failing which it would take legal action (Exhibit15);*
- (xxv) *Defendant failed to do so and Plaintiff decided to take legal action;*
- (xxvi) *Plaintiff's current Solicitors wrote to Mr Valenitabua seeking payment of \$66,666.36 (Exhibit 16);*
- (xxvii) *Plaintiff always wanted to complete the tenancy for period of five years.*

21. During cross-examination Ms Prasad stated as follows:-

- (i) *Buildings on the property were built by Plaintiff;*
- (ii) *Plaintiff is involved in furniture manufacturing, house construction, property rental and wholesale of timber;*
- (iii) *Building on Lot 7 was constructed by Plaintiff in 1980;*
- (iv) *Confirmed saying the Agreement and condition for payment of rental;*
- (v) *Area is prone to flooding during heavy rainfall;*
- (vi) *Plaintiff had sub-lease Agreement with APCO which was prepared by Plaintiff;*
- (vii) *Plaintiff did not draw up lease agreement with Defendant because Defendant said he will get his lawyer to draw up Lease Agreement;*
- (viii) *On settlement, Plaintiff asked Defendant for lease agreement but was not provided;*
- (ix) *She followed up but Defendant did not provide one;*
- (x) *Plaintiff carried out minor repairs when it sub-leased the premises to APCO;*
- (xi) *The renovation work carried out by Plaintiff was consented to by Defendant verbally;*
- (xii) *No written consent was given;*
- (xiii) *The roof leakage mentioned in Exhibit 6 (Item 9) was minor roof leakage;*
- (xiv) *After APCO vacated the premises she went to inspect the premises and put the matter before the Defendant;*
- (xv) *Plaintiff wanted to occupy but could not occupy because of the damage to the property;*
- (xvi) *She did not have any photographs taken in 2007 because Defendant was neighbor. She had cordial relationship with Defendant and Plaintiff wanted Defendant to see the damages which could be seen;*

- (xvii) She took photographs of the premises in 2010 to proof Defendant's negligence;*
- (xviii) Plaintiff is operating from its property at Lot 2 Laucala Beach Estate and building on that property was built in 2003;*
- (xix) When Plaintiff moved out they did not fully move to Laucala Beach Estate;*
- (xx) At date of trial Plaintiff fully moved to Laucala Beach Estate;*
- (xxi) Keys for the premises were returned to Defendant when APCO moved out. However, she later stated she was not sure;*
- (xxii) She was aware about the contents of letter dated 13 September 2006, written by Plaintiff to Defendant (Exhibit 9);*
- (xxiii) According to her there were two floods and one was in 2007;*
- (xxiv) Plaintiff may have had spare key;*
- (xxv) Denied that Plaintiff had effective control of the premises even though Plaintiff held onto spare key;*
- (xxvi) Denied that Messrs Lajendra Law advised her that Plaintiff has no case.*

22. During re-examination Ms Prasad:-

- (i) Confirmed that Messrs Lajendra Law did not advise Plaintiff that it had no case;*
- (ii) The term about lease in the Agreement was explained to Plaintiff and Defendant;*
- (iii) Plaintiff had discussions with Defendant about repairs carried out by Plaintiff;*
- (iv) Defendant had no issue when he gave consent for APCO sub-lease;*
- (v) Defendant did not have any issues when he purchased the property;*
- (vi) When property was sold it was not in appalling state.*

Defendants Case

23. Defendant gave evidence himself and did not call any other witnesses.
24. During examination in chief Defendant gave evidence that:-
- (i) *He bought four (4) properties from Plaintiff for \$1.2m of which he paid \$1m and balance \$200,000.0 was to be offset against rent as per clause 1(b) of the Agreement;*
 - (ii) *Pursuant to clause 1(b) Plaintiff was to lease Lot 7 for 5½ years at monthly rental of \$3,030.31 until \$200,000.00 was set off;*
 - (iii) *Besides the Agreement he did not enter into any Tenancy Agreement with Plaintiff;*
 - (iv) *He did not promise to give any Tenancy Agreement to Plaintiff and Plaintiff did not ask for one;*
 - (v) *When he went to inspect property before buying it Plaintiff's director said Plaintiff will keep property for 5½ years and will look after the property and he followed the Agreement;*
 - (vi) *He gave consent for Plaintiff to sub-lease premises to APCO and letter of consent was brought to his office by Plaintiff and he signed after letter was read to him by his office staff;*
 - (vii) *He was aware that Plaintiff sub-leased premises to APCO, but that was not his responsibility;*
 - (viii) *He did not come on the premises after APCO came as tenant;*
 - (ix) *He agreed for Plaintiff to repair the property and that it would pay for it;*
 - (x) *Plaintiff sent letter requesting for repair costs but he did not respond because it was not his responsibility;*
 - (xi) *When Plaintiff walked out he did not get the keys and did not get it until trial date;*
 - (xii) *He went back on the premises after 5½ years after his lawyer told him to go;*

- (xiii) *He sold the premises and prior to sale he carried out repairs to the roof but did not raise the floor level;*
- (xiv) *He does not agree with Plaintiff's claim for the sum of \$66,000.00 and \$6,800.00 and wants Plaintiff's claim to be dismissed.*

25. During cross-examination the Defendant stated as follows:-

- (i) *In 2005, he owned four (4) properties in Vatuwaqa, Suva;*
- (ii) *Of four (4) properties he had he rented out Lot 7 to Plaintiff, part of Lot 9 (empty spaces) and Lot 10 to Tyre Pro;*
- (iii) *When he entered into Tenancy Agreement with Tyre Pro they both had own lawyers and his lawyer prepared the Tenancy Agreement and gave to Tyre Pro;*
- (iv) *He is aware that when you give property to someone you give the paper;*
- (v) *He lives at Lot 8 which is owned by Korean Motors Ltd;*
- (vi) *He is the owner of Korean Motors Ltd;*
- (vii) *When he saw Lots 7, 8, 9 and 10 prior to purchase there was no problem;*
- (viii) *When asked if Lot 7 building belonged to him he said he followed the Agreement and for five and half (5½) years it belonged to Plaintiff. It was Plaintiff's responsibility;*
- (ix) *When asked where it says in the Agreement he stated that it was agreed verbally;*
- (x) *When asked if Plaintiff talked to him about repairs he stated that he never heard anything;*
- (xi) *When APCO came Plaintiff went to him about repairs to building;*
- (xii) *He did not say anything to Plaintiff about repairing the building;*
- (xiii) *When asked if he knew why APCO left building he stated that it was not his responsibility and it was a matter between Plaintiff and APCO;*

- (xiv) *After APCO left he did not see Plaintiff coming back and occupying the premises;*
- (xv) *Denied receiving letter (Exhibit 9, 10 and 15) being letters dated 13 September 2006, 13 February 2007 and 7 May 2007 from Plaintiff;*
- (xvi) *When asked if he knew his postal box number 18677 was working he said he was not sure but he did not receive the letters;*
- (xvii) *Letter dated 8 March 2007 (Exhibit 11) from Plaintiff addressed to him was received by his lawyer;*
- (xviii) *Letter dated 4 March 2009 from Lajendra Law to him sent to care of Valenitabua was received by his lawyer;*
- (xix) *Since Plaintiff's responsibility was to repair the premises he did not respond to Plaintiff's letter about repairs;*
- (xx) *He is aware that Plaintiff did not occupy the premises after APCO vacated the premises and he did not see Plaintiff come to the premises;*
- (xxi) *When it was put to him that Plaintiff did not come back and occupy the premises because of roof leakage he stated that he did know;*
- (xxii) *There was flooding in 2007 and as a result water came into Lot 8;*
- (xxiii) *He did not see if water came on Lot 7 because it was night time and he did not check;*
- (xxiv) *Lot 7 (premises) is next to his building and is one minute walk from his place;*
- (xxv) *He did not know his building had leakage;*
- (xxvi) *He did not find out why Plaintiff did not come back because for five and half (5½) years it was Plaintiff's responsibility;*
- (xxvii) *More than ten (10) people came and asked him about the premises and he asked them to see Plaintiff;*
- (xxviii) *He entered building after five and half (5½) years after his lawyer told him to;*

(xxix) *He is not aware about the premises being broken into.*

26. During re-examination Defendant gave evidence that when Messrs Lajendra Law wrote the letter his lawyer was Mr Valenitabua and the Sale and Purchase Agreement was prepared by Messrs Patel Sharma & Associates.

Section 95 Property Law Act Cap 130

27. Even though Plaintiff did not plead breach of any implied term in Section 90 of Property Law Act Cap 130 (“**PLA**”) Plaintiff in its closing Submission submitted that Defendant breached the implied terms.
28. Counsel for the Defendant in his Submission took objection to Plaintiff raising breach of provision of Section 90 of PLA at this stage and when it was not pleaded.
29. However, in Defendant’s Submission Defendant referred Section 90 of PLA and submitted that based on the evidence it is the Plaintiff who has breached the implied terms in s90.
30. Since both parties have addressed this Court on s90 of PLA I will comment on this provision but will not take this into account as a factor in my decision.
31. Section 90 of PLA provides as follows:-

“90. In every lease of land there shall be implied the following covenants by the lessee, for himself, his personal representative, transferees and assigns with the lessor and his personal representatives and transferees: -

(a) that he or they will pay the rent thereby reserved at the time therein mentioned:

Provided that in case the demised premises or any part thereof shall at any time during the continuance of the lease, without neglect or default of the lessee, be destroyed or damaged by fire, flood, lightning, storm, tempest or earthquake so as to render the same unfit for the occupation and use of the lessee, then and so often as the same shall happen, the rent thereby reserved, or a

proportionate part thereof, according to the nature and extent of the damage, shall abate, and all or any remedies for the recovery of the rent or the proportionate part thereof shall be suspended until the demised premises shall have been rebuilt or made fit for the occupation and use of the lessee, and in case of any dispute arising under this proviso the same shall be referred to arbitration under the provisions of the Arbitration Act;

(b) that he or they will, at all times during the continuance of the said lease, keep, and at the termination thereof yield up, the demised premises in good and tenantable repair, having regard to their condition at the commencement of the said lease, accidents and damage from fire, flood, lightning, storm, tempest, earthquake and fair wear and tear (all without neglect or default of the lessee) excepted.”

32. Section 90(a) makes it clear that if the leased premises became unfit for occupation, the leased premises or any part thereof is destroyed without neglect or fault of lessee or is damaged by fire, flood, lightning storm, tempest or earthquake then the rent for the remaining period of the lease shall abate and any dispute about this implied term shall be referred to arbitration under the provision of Arbitration Act.
33. Under section 90(b) Lessee is only required to keep the premises in tenantable repair and is liable only for damages caused to the premises due to lessee's negligence or default **BUT** is not liable for any damages caused to the premises by fire, flood, lightning storm, tempest or earthquake and fair wear and tear.
34. In this instance, if Plaintiff would have pleaded breach of s90 in its Statement of Claim, then most probably this Court would have ruled in its favour.
35. Since Plaintiff did not plead breach of s90 of PLA, I will not dwell on the provision of s90 any further.

Analysis of Evidence

36. After analyzing the documentary and oral evidence this Court makes following findings:-

(i) Parties entered into the Agreement whereby Plaintiff agreed to sell and Defendant agreed to buy Plaintiff's property comprised in Certificate of Title Nos. 22068, 22069, 22070 and 22071 for consideration sum of \$1.2m;

(ii) on settlement date Defendant paid Plaintiff \$1m and balance sum of \$200,000.00 was to be paid under clause 1(b) which provided as follows:-

“The Vendors will effective from settlement date lease from the Purchaser the said property being Lot 7 DP No. 5502 comprised and described in CT No. 22068 at a monthly rental of \$3,030.31 (VAT inclusive) for a period of 5½ years. Rental for the entire said property shall be \$200,000.00 (inclusive of VAT) and shall be treated as payment in advance by the Vendors pursuant to this agreement. The Vendors shall be at liberty to sub-lease the said property to a suitable tenant after giving the Purchaser prior written notice of intention to do so.”

(iii) No Lease Agreement was entered into between the parties;

(iv) After occupying premises which is known as Lot 7 on Deposited Plan 5502 and is comprised and described in Certificate of Title No. 22068 for thirteen (13) months from 1st May 2005 to 31 May 2006, Plaintiff with Defendant's prior consent sub-leased premises to APCO for two (2) years from 1 June 2006;

(v) During the flood in 2007, water leaked into the premises through the roof which resulted in the roof being damaged as shown in Exhibit 18;

(vi) Water also entered into the premises and adjoining lots because of blocked drains;

(vii) Due to water leakage APCO vacated the premises in May 2007 (12 months of tenancy);

- (viii) Since June 2007, Plaintiff did not occupy the premises because of the condition of the premises which made the premises uninhabitable;
- (ix) I believe that Plaintiff approached Defendant orally and in writing to repair the premises but Defendant refused and just ignored Plaintiff's request;
- (x) I accept Plaintiff's evidence that it carried out renovation works on the premises when it sub-leased the premises to APCO because the works required to be carried out by APCO were minor and did not cost much;
- (xi) I also accept Plaintiff's evidence that it wrote to Defendant on 13 February 2007 (Exhibit 10);
- (xii) Defendant did not carry out any repairs to the building to make it habitable;
- (xiii) Plaintiff held keys to the premises but did not occupy and benefit from the premises after APCO vacated the premises;
- (xiv) Defendant ignored Plaintiff's request to repair the building on Lot 7.

Whether Plaintiff or Defendant was responsible to Repair the Building on Lot 7 after the flood in 2007

- 37. There is no Lease Agreement between the parties and the Sale and Purchase Agreement does not state the terms and conditions of leasing except what is stated at paragraph 1(b) of the Agreement.
- 38. On the basis of my findings, I am of the view that it was Defendant's responsibility to repair the building by fixing or changing the entire roof of the building and lifting the floor level of the premises to avoid flooding in future for following reasons:-
 - (i) The balance purchase price owing was \$200,000.00;
 - (ii) The cost to repair the roof and uplift the floor of the premises would obviously be quite substantial;

- (iii) If Plaintiff had to carry out substantial repairs and incur substantive costs then the balance purchase price to be received by Plaintiff would be much less than \$200,000.00;
 - (iv) No reasonable person in Plaintiff's position would agree to carry out substantial repairs to the premises because to do so would be uneconomical;
 - (v) Defendant was occupying the building next door and should have been aware about the condition of the premises and should have made arrangements to fix it rather than ignoring Plaintiff's request.
39. I therefore find that it was Defendant's responsibility to carry out repair works to the building in Lot 7 and he failed to do so. Also, the Plaintiff had given him reasonable notice stating that if premises is not repaired it will not continue with the leasing agreement arranged between Plaintiff and Defendant (Exhibit 10).
40. In terms of the Agreement Defendant had to pay balance purchase price of \$200,000.00 by leasing the premises (Lot 7) to Plaintiff at rental of \$3,030.31 for five and half years. The Agreement provided that total sum of \$200,000.00 being balance purchase price was to be treated as rental paid in advance.
41. Plaintiff had to occupy the premises for five and half years (66 months) to have the full benefit of the sum of \$200,000.00 which was to be treated as balance purchase price.
42. In terms of the evidence produced in Court I make following findings in respect to clause 1(b) of the Sale and Purchase Agreement:-
- (i) The terms of lease between the parties was for five and half years (66 months);
 - (ii) The lease commenced on 1 May 2005;
 - (iii) Plaintiff and APCO, the sub-lessee occupied the premises subject to the lease for twenty-five (25) months;
 - (iv) The period that Plaintiff did not occupy the premises was forty-one (41) months.

43. I note that Plaintiff has only claimed \$66,666.36 which equates to twenty-two (22) months of rental. The reason Plaintiff claimed back rental for twenty-two months is not entirely clear to me as it appears that \$66,666.36 is made up of rental until 31 March 2009 when Messrs Lajendra Law issued the notice on 4 March 2009 (Exhibit 12).

44. In fact and according to the evidence produced in Court Plaintiff did not occupy the premises for forty-one (41) months which is made up as follows:-

<i>Period of lease</i>	<i>66 months</i>
<i>Less: period occupied by Plaintiff</i>	<i>13 months</i>
<i>period occupied by APCO</i>	<i>12 months</i>
	<u><i>25 months</i></u>
<i>Period unoccupied</i>	<i>41 months</i>

45. Rental for the period occupied would be \$124,242.71.

46. This is to some extent supported by what was said in letter dated 13 February 2007 by Plaintiff to the Defendants where Plaintiff demanded payment of the sum of \$135,353.36.

47. The reason Plaintiff claimed \$66,666.36 is only known to Plaintiff and its Counsel. Plaintiff is no doubt bound by its pleading.

48. Hence, on the basis of the evidence produced in Court both documentary and oral, I hold that it is just and fair that judgment be entered for the Plaintiff in the sum of \$66,666.36.

49. Plaintiff claims \$6,800.00 for repairs carried out to the premises prior to sub-leasing of the premises to APCO to meet the requirement of APCO.

50. The improvements that were required to be carried out by Plaintiff in order to sub-lease premises to APCO is stated in letter dated 17 May 2006 from Plaintiff to APCO (Exhibit 6).

51. The only improvement that relates to the building are those stated under the heading "Factory" in Exhibit 6 which are as follows:-

"(i) To seal side entry with timber;

- (ii) New office (3m x 3m);
- (iii) Install new door in upstairs office;
- (iv) Window grills;
- (v) Partition 1 side mezzanine floor;
- (vi) Repair roof leakage.”

52. Plaintiff's witness in her evidence stated that they carried out the improvements and repairs (roof leakage) because the works required were minor.

53. Also, the improvements were required by APCO and since Plaintiff sub-leased the premises to APCO who required the additional improvements it became Plaintiff's obligation to carry out such improvements specially when Plaintiff charged APCO rental at \$4,000.00 plus Value Added Tax per month when monthly rental it was supposed to pay Defendant was \$3,030.31.

54. In any event, no evidence has been tendered in Court (invoices, statements, contracts, etc.) to prove what Plaintiff expanded in carrying out the improvements.

55. This Court therefore has no option but to dismiss Plaintiff's claim for the sum of \$6,800.00.

Interest

56. Plaintiff claims interest at the rate of 10.5% per annum. Plaintiff is only entitled to interest that it would have earned if it had invested the money. Hence, I have no hesitation in awarding interest on the judgment sum at the rate of three per cent per annum from date of filing of this action until date of judgment.



Costs

57. For costs I have taken into consideration the fact that trial lasted for only one (1) day and both parties co-operated with each other and filed Agreed Bundle of Documents which were tendered and exhibited by consent.

Order

58. I make following Orders:-

- (i) Defendant do pay Plaintiff the sum of \$66,666.36;
- (ii) Defendant do pay the Plaintiff interest on the sum of \$66,666.36 at the rate of three percent per annum from 5 October 2009 to date of this judgment;
- (iii) Defendant do pay Plaintiff costs of this action assessed in the sum of \$3,000.00.



K. Kumar
JUDGE

At Suva

31 March 2016

Diven Prasad Lawyers for the Plaintiff

MC Lawyers for the Defendant