

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 184 of 2014**

**BETWEEN** : **DEO CONSTRUCTION DEVELOPMENT COMPANY**  
**LIMITED** a duly incorporated company having its registered office at  
11 Kennedy Street, Martintar, Nadi.

**PLAINTIFF**

**AND** : **DENARAU CORPORATION LIMITED** a company duly  
Incorporated under the laws of Fiji and having its registered office at  
Level 10, FNPF Place 343 Victoria Parade, Suva in the Republic of  
Fiji.

**DEFENDANT**

**Mr. Gyanendra Adish Narayan for the Plaintiff**  
**(Ms) Bhavna Geeta Narayan for the Defendant**

**Date of Hearing : - 19<sup>th</sup> May 2016**  
**Date of Ruling : - 01<sup>st</sup> July 2016**

**RULING**

- (1) This matter was set for hearing on 19<sup>th</sup> May 2016, on the Plaintiff's application for Assessment of Damages following a Judgment on liability delivered by Hon. Justice Ajmeer on 24<sup>th</sup> February 2015.
- (2) During the hearing on Assessment of Damages, Counsel for the Defendant in cross-examining the Plaintiff sought to establish that damages (if any) for loss of rental income would only flow from 13<sup>th</sup> August 2014, viz, the date the Plaintiff actually became the registered proprietor of SQ Lot 6.
- (3) The hearing was adjourned as an objection was raised by the Counsel for the Plaintiff on the ground that the learned Judge has already made a determination of liability against the Defendant and therefore, questions as to when the liability commences ought not to be raised during the Assessment of Damages.

(4) This ruling relates to the objection raised by the Plaintiff during the hearing on Assessment of Damages.

(5) The Defendant's argument runs essentially as follows;

(Reference is made to paragraphs 1.20 and 1.21 of the written submissions)

*Para 1.20 The Defendant submits that regardless of that view, the Plaintiff's damages could not have possibly begun to accrue from the date the Plaintiff lodged the application for consent (i.e. 8/4/14) as at that time (and until 13/8/14) the owner of the subject land was another entity named Coptic Orthodox Church (Victoria) Property Trust. The Plaintiff at the time of applying for consent had merely signed a Sale & Purchase Agreement for purchase of the subject land from this entity and unless and until legal ownership of the subject land was transferred to the Plaintiff (which transfer took place on or about 13/8/14) the Plaintiff would not have and/or could not have commenced building a residence on the land.*

*1.21 Hence, regardless of the learned Judge's view that the Defendant's refusal of consent was unreasonable and unjustifiable, legally, practically and logically the Plaintiff could have only commenced building on SQ Lot 6 once it acquired title, became the registered proprietor and gained rights of ownership over the said land. Accordingly, the Defendant is entitled to put forward its case in the enquiry of assessment that the Plaintiff's claim for damages can only flow from the date of registered ownership onwards and not from a time when he was in the mere process of acquiring the land and/or applying for consent to build. For the purposes of assessment of damages, it is therefore immaterial that the Defendant's action has been held to be unreasonable and unjustifiable as the time period of the damages is not in any way connected to this finding. Rather, the time period for the alleged losses is connected to the date when the Plaintiff would have commenced construction, which could only be when he became the registered owner of the land.*

(6) Counsel for the Defendant heavily relied on a passage in the High Court decision, 'Deo v Nasinu Town Council (2012) FJHC 1402'. The passage is this,

*The inordinate delay by itself will not guarantee damages to the Plaintiff. He has to prove that actual economic loss incurred to him. The Plaintiff in his evidence admitted that he had to obtain commercial loan for the said addition and due to the delay the loan was not utilised. No actual figure of loss from that was forthcoming.*

*Though the Plaintiff's building plan was delayed for more than three years he is not entitled to the rental income of the proposed additional space since he had admitted that at the moment he could not even rent the available space. I do not have evidence when the slump of the commercial space market in Fiji or in the said area happened, to determine the economic loss to the Plaintiff. It is clear that if the Plaintiff had completed the additional space he could not*

*have rented the additional space now since his building is not fully occupied at the moment. In order to determine the damages the Plaintiff needs to prove a time period and also the estimated rent for the time period. No time period can be deducible as the Plaintiff has not elicited evidence as to probable time of completion of the additional space. The Plaintiff has also failed to prove when the commercial space market in the area slumped. He cannot claim damages in 2012 for proposed extra space as the available space in the building is still vacant. The Plaintiff has failed to prove economic loss due to the inordinate delay of the building plan. The Plaintiff has obtained a Judgment by default and the summons for assessment of damages is struck off. No cost.*

It was contended by the Defendant that;

*Para 1.15 It is clear from the above that notwithstanding judgment on liability, Master Amarartunga (as he then was) in assessing damages revisited the issue of liability to decide the time period within which the Defendant's liability supposedly commenced and such an enquiry is necessary when the pleadings itself do not suggest a time period.*

- (7) In 'adverso', Counsel for the Plaintiff submits; (References is made to paragraph 1.7 of the written submissions)

*Para 1.7 The Court has already found that the Defendant's action has caused the Plaintiff to suffer loss. The issue of it being a registered owner or not is irrelevant and cannot not be raised or reopened by the Defendant. The present hearing is for Assessment of Damages and not on whether the Plaintiff was a registered owner or not or whether the Plaintiff is entitled to damages. It is concerned with the quantum of damages (proof) and not the cause of it. The Defendants Solicitors appear to be submitting the Plaintiff should prove what caused the damage as well as what needs to be proved. The latter is premature and the Defendant can argue in its closing submissions if the Plaintiff has failed to meet the required proof. We fail to see the relevance of their entire submissions as the hearing has not been concluded. Reference to the case authorities which deals with onus of proof is also immaterial at this stage.*

- (8) Let me now move to consider the objection raised by the Plaintiff.

The Plaintiff's claim for damages is for alleged loss of prospective rental income which the Plaintiff claims it would have earned had it not been for the Defendant's refusal to grant development consent resulting in delay in construction of a residence on the land.

(9) At paragraph (40) of the Judgment, the learned Judge stated as follows;

*Para 40 Award of damages is a private law remedy. To obtain an award of damages it is necessary that the Plaintiff has suffered a private law wrong such as breach of contract. An award of damages may also be granted on the ground that the defendant has acted wrongfully in refusing to grant development consent. The Plaintiff had proved a casual link between the wrongful decision and the loss suffered. The Plaintiff applied for development consent to build a residence to rent it out and earn income. The consent has been refused wrongfully by the defendant. The refusal to grant consent has caused delay in the construction. The Plaintiff suffers loss as a result of the defendant's wrongful decision. I feel the Plaintiff is entitled to an award of damages. I would therefore order the defendant to pay damages to the Plaintiff to be assessed.*

(Emphasis added)

(10) I keep well in my mind the following excerpt from Hon. Justice Ajmeer's ruling.

*"The refusal to grant consent has caused delay in the construction. The Plaintiff suffers loss as a result of the defendant's wrongful decision. I feel the Plaintiff is entitled to an award of damages."*

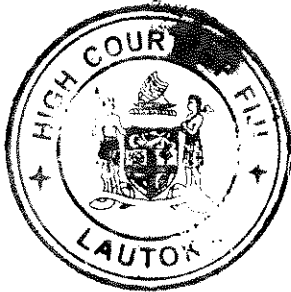
(11) The learned Judge has held that the Defendant's **action** has caused the Plaintiff to suffer loss (viz, the Defendant's **refusal** to grant development consent to the Plaintiff on the basis that at the time the Plaintiff lodged its application for consent it was not the registered proprietor of SQ Lot 6. )

(12) Therefore, the Plaintiff's claim for damages can only flow from the date of the Defendant's **wrongful action**. To be more precise, the date the Defendant **refused** to grant development consent to the Plaintiff, viz, 06<sup>th</sup> June 2014.

(13) I am bound by the learned Judges finding on the starting point of the Defendant's liability.

(14) **FINAL ORDERS**

- (i) The Plaintiff's objection is upheld.
- (ii) I make no Order as to costs.



At Lautoka

01<sup>st</sup> July 2016

**Jude Nanayakkara**  
**Master**