

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

Civil Action No. 141 of 2008

BETWEEN : **JAI SAT NARAYAN**

Plaintiff

AND : **GOPAL REDDY** also known as **PATRICK GOPAL REDDY** of Raj Gopal Reddy of Golf Link, Lautoka, Fiji, Businessman.

Defendant

Appearances : Roneel Kumar for the Plaintiff
M. Degei for the Defendant

R U L I N G

INTRODUCTION

[1]. The application for summary judgment of Jai Sat Narayan is before me for consideration. The application is made pursuant to Order 14 Rule 1 of the High Court Rules 1988. The summons seeks the following:

- (i) judgment in the sum of Aus\$118,000.00.
- (ii) 12% interest on the judgment from the 20 June 2008 to the date of judgment.
- (iii) interlocutory and/or final judgment for damages for breach of contract to be assessed summarily or as directed by the Court.
- (iv) costs.

[2]. **Order 14 Rule 1** of the **High Court Rules 1988** says as follows:

1.-(1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has given notice of intention to defend the action, the plaintiff may, on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for **judgement** against that defendant.

BACKGROUND

[3]. The supporting affidavit of Jai Sat Narayan deposes that Gopal Reddy requested a loan from him. Pursuant to that request, Narayan had loaned Reddy the total sum of Aus\$118,000.00. According to Narayan, he paid the money to Reddy on two separate occasions in Sydney, Australia. The first occasion was on 17 April 2008 when he gave Reddy Aus\$80,000.00. The second was on 19 June 2008 when he gave Reddy Aus\$38,000.00.

[4]. Narayan further deposes that Reddy did agree to re-pay the said monies together with 12% interest per annum on or before the 27 June 2008. On 19

June 2008, Reddy signed an agreement acknowledging the total loan of Aus\$118,000.00 plus 12% interest. A document that is purported to be the said agreement is exhibited to Narayan's affidavit.

- [5]. Narayan says that Reddy had failed to repay the said monies by the agreed date which prompted him to then send Reddy a demand notice. Narayan also says that the agreement he signed with Reddy was witnessed by a mutual friend namely Masla Mani. A statutory declaration by Mani declaring that he had witnessed the said agreement is exhibited in Narayan's affidavit. This statutory declaration is signed pursuant to the Commonwealth of Australia Statutory Declaration Act 1959 and which includes an acknowledgement by the declarant that he understands that a false statement therein is an offence under section 11 of the said Act. In this case, considering that the defendant has since passed on, it would have been ideal for Mani to have sworn a separate affidavit deposing that he knew both the plaintiff and the defendant and that he did witness the agreement which both parties signed before him on the particular date and time and venue in question.
- [6]. Reddy, who died sometime after these proceedings were filed, did swear an affidavit in which he admitted only to borrowing and receiving from Narayan the sum of Aus\$38,000. He agreed he was to have repaid this to Narayan by 27 December 2009. The rest of the allegations pertaining to the Aus\$80,000, the 12% interest, the written agreement, and the allegations concerning Masla Mani's involvement in witnessing the agreement – Reddy denied. Reddy in fact asserted that the signature in the agreement that is purported to have been his, was not his.
- [7]. The document that Narayan alleges is the agreement between him and Reddy was concluded at Chalmers Street, Surry Hills, Sydney, Australia on 19 June 2008. The person who purportedly witnessed the agreement, Michael Masla Mani, resides in Ingleburn New South Wales.
- [8]. In their submissions, the defendant highlights that the purported contract was concluded in Australia, the monies exchanged in Australia, the purpose of the advance was to set up a business venture in Australia, the alleged sum was in Australian dollars and that the loan agreement was drawn up in Australia.
- [9]. They also highlight that such an agreement, if made in Fiji, would attract stamp duty. And that the law in Fiji is that an agreement, if unstamped,

would not be admissible in evidence in a court of law. There is no indication that the agreement in question was even stamped in Australia. There is no undertaking by the plaintiff's counsel to have the document stamped in Fiji, let alone – the issue whether such an agreement could be stamped in Fiji.

- [10]. Then, after raising issue about the jurisdiction of Fiji Courts to deal with the application, the defendant's counsel argue that the case should be postponed to trial – but only if this court were to hold that Fiji Courts have jurisdiction over a contract entered into and allegedly completed in Australia.
- [11]. Fiji Courts have a solemn obligation to uphold a litigant's right to invoke their jurisdiction in a case properly within their jurisdiction. Whether or not this case is such a case was not properly argued before me. I reserve this issue for future consideration on proper application by the defendant and arguments.
- [12]. Although the defendant admits he was given a loan of \$38,000 by the plaintiff, he denied having signed the agreement. It appears then that the \$38,000 he was given was pursuant to a different agreement/arrangement from the one pleaded in the statement of claim and upon which the plaintiff bases his claim. For this reason, and considering also that the pleaded agreement is not stamped in Fiji I am not prepared to grant summary judgement separately on that sum. I am also not prepared to grant summary judgement on the sum claimed by the plaintiff for the same reason.
- [13]. This case is adjourned to 23 April 2013 for further directions.

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Master Tuilevuka

At Lautoka
09 April 20

