IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 265 of 2012

BETWEEN : **MOHAMMED YASIN KHAN** also known as **YASIN KHAN** of 12 Tamasua Road, Raiwai, Suva, Fiji, retired engineer.

PLAINTIFF

AND : **CENTRAL MANUFACTURING COMPANY LIMITED**, a limited liability company having its registered address at Lady Maraia Road, Nabua, Suva.

DEFENDANT

BEFORE : **Justice Deepthi Amaratunga**

COUNSEL : **Ms. Sloan J.** for the Plaintiff
Mr. Apted J. for the Defendant

Date of Hearing : **12th March, 2013**
Date of Judgment : **30th August, 2013**

JUDGMENT

A. INTRODUCTION

1. The Plaintiff filed this action by way of writ of summons for special damages in the sum of FJ$148,558.92 and for general damages. The claim is based on alleged non-payment of retirement benefit to the Plaintiff, which allegedly granted to senior management personnel at the discretion of the Defendant. The claim is based on promissory estoppel/ equity in terms of the paragraph 36 of the statement of claim. The Defendant sought to strike out the statement of claim and dismissal of action for non disclosure of reasonable cause of action or to strike out paragraph 36 of the statement of claim for the same reasons. The

paragraph 36 of the statement of claim pleads promissory estoppel/equity as the base for cause of action. The effect of the alternate relief is the same, as I have granted the Plaintiff an opportunity to amend the pleadings if he so wish, after the filing of this application for strike out, but the alleged cause of action is promissory estoppel /equity. The Plaintiff was told that he might not receive a retirement benefit, but later when he inquired he was informed that something was in the pipeline. The issue is whether alleged verbal statement '*something is in the pipeline*' can be considered as establishing a promissory estoppel.

B. THE FACTS AND ANALYSIS

2. The Plaintiff was employed by the Defendant at its factory from 1972 to 2006. On 30th September, 2006 the Defendant voluntarily retired from service and at that time he has risen to the position of Security and Environmental Health and Safely manager after joining as a technician initially.

3. The Plaintiff alleges that during his tenure the Defendant had a policy where senior management were granted and executive retirement benefit based on their years of service. This fact is denied by the Defendant, but stated that it provided retirement benefit to unionized waged employees who were subject to a collective agreement, and a general retirement benefit applicable to all other staff.

4. The Defendant in its statement of defence alleged that at the time of the retirement of the Plaintiff the general benefit for non-unionized wage workers was expressed in a document titled the " Terms & Conditions of Employment" approved in 1996 and it stated as follows

> 'Employees retiring within 6 months after reaching their 55th birthday will receive a lump sum payment agreed by the management. Any earlier retirement will not be compensated and those continuing beyond 55 years and up to 60 years **shall not receive any compensation**' (emphasis is mine)

5. After filing the statement of defence the Defendant sought to strike out the statement of claim, on the basis of non-disclosure of reasonable cause of action, and initially, allowed the Plaintiff to amend the statement of claim and after perusing the amended statement of claim, indicated its intension to proceed with the summons to strike out the statement of claim without filing an amended statement of defence. The Defendant's position remained that even the amended statement of claim does not disclose a reasonable cause of action.

6. According to the statement of claim the terms and conditions of the employment were not confined to the document referred to as *'Terms and Conditions of Employment'* and this was not amended or updated hence the Plaintiff had an expectation based on policies and conduct of the Defendant. So, while not denying the express conditions in the terms and conditions for executive and or managerial staff, the Plaintiff's contention is that despite such written policy, since it was not updated the practice and conduct of the Defendant constituted the policy.

7. There is no cause of action for damages for legitimate expectation pleaded in the statement of claim and I have not been appraised of existence of such cause of action for damages. The cause of action is contained in paragraph 36 of the stamen of claim and that is based on promissory estoppel /equity. This is an equitable remedy and Plaintiff admitted that there was no written condition or term in his employment contract or the terms and conditions of the policy adopted by the Defendant, which granted any retirement benefit as alleged in the statement of claim. In contrary, there is an express condition in the terms of employment that prohibit such payment, in the policy referred in the statement of defence. The Plaintiff's position is that though such express condition was present in the employment contract, since it was not updated he relied on the assurances and or the conduct of the Defendant and believed that he would receive a retirement benefit.

8. So, the only cause of action in the statement of claim is the promissory estoppel which is pleaded in paragraph 36 of the statement of claim. The initial statement of claim also pleads the same cause of action in the identical paragraph, and the amendment had not change the alleged cause of action substantially. The Defendant is either seeking to strike out the paragraph 36 of the amended statement of claim or to strike out the statement of claim and

dismiss the action. Since, the cause of action is pleaded in paragraph 36 strike out of that paragraph would ultimately result the inevitable dismissal of the action. The Plaintiff was given an opportunity to amend the statement of claim after filing of the summons for strike out, and knew the Defendant's objection to said paragraph 36 and could not amend or rephrase to change its effect. Even at the hearing the counsel for the Plaintiff stated that they could not do much to amend the said paragraph or the other paragraphs as those were the actual facts they rely on this action.

9. Though the summons seeks alternative remedy either to strike out the statement of claim or to strike out the paragraph 36 of the statement of claim it amounts to one thing and issue is whether there is a claim for promissory estoppel substantiated in the statement of claim. The Plaintiff in its amended statement of claim (hereinafter referred to only as the statement of claim) alleges in paragraph 21 that when he inquired about the retirement benefit he was told that '*something was in the pipeline'* by Jason Murphy, the General Manger of the Defendant. This indicate that Plaintiff was not certain about the receipt of the retirement benefit and had inquired of that before his retirement and no promise was made by Mr. Jason Murphy. The statement of Jason Murphy can at maximum meant that the issue of retirement benefit is being considered by the management and not anything beyond that. It is an admitted fact that before this inquiry he was told that he would not receive any retirement benefit by the predecessor of Mr. Jason Murphy.

10. No written request was made by the Plaintiff regarding the retirement benefit and no assurance was given either verbally or otherwise by the Defendant to the Plaintiff that a retirement benefit would be granted. The Plaintiff in the statement of claim alleges that even prior to his retirement some other senior managers were also denied any retirement benefit and this resulted the Plaintiff to make a query to that effect. The answer to the said query was that '*something is in the pipeline*' is not a promise, but that issue of retirement benefit is under consideration at that time. The Plaintiff queried the issue of retirement benefit as it was not given to another employee under similar circumstances and also it was not a written condition to grant retirement benefit. The only conclusion that can be deduced from the undisputed facts is that the grant of the retirement benefit was discretionary and the court will be reluctant to interfere with such discretion of the management of the Defendant. The Plaintiff was no

certain that he would receive a retirement benefit. If not there was no reason for the Plaintiff to make such a query and be silent thereafter. If there was a clear policy there was no need of such a query, indicating that Plaintiff was not certain about the receipt of the retirement benefit when he asked and did not proceed beyond that when the answer was negative.

11. The Plaintiff had made this query before retirement and when he was not given any firm undertaking he could have sought written clarification but he did not do so. If there was an unwritten policy as alleged in the paragraph 10 of the statement of claim, he could have made further inquires regarding the prospect of the receipt of any retirement benefits. Not only did he failed to make any requests regarding the retirement benefit prior to the retirement but also waited almost 6 years from the date of retirement in order to institute this action seeking retirement benefit in this action.

12. The claim in this action is based on the promissory estoppel. The statement of claim does not indicate any promise given by the Defendant, but state when he queried about the non payment of retreatment benefit to the certain persons who retired prior to him, he was informed that something was in the pipeline. So, if such a statement can be considered as promissory estoppel this action should proceed to trial and if not it will be a waste of time and money for Plaintiff to continue this action, bearing in mind the cost of litigation and other factors like delay and also the waste of resources if the result of the action are foregone conclusion considering the legal position of promissory estoppel. Even if there is a slight chance of success, the Plaintiff should be given the opportunity to continue with the action as even a weak case needs to go through the motions in court. So the burden of the Defendant in the present summons seeking strike out is high.

13. In Lindon V Commonwealth of Australia (No.2) (1993) 136 ALR 251 at 256 Kirby J held;

> 'Summary relief of the kind provided for by … for absence of a reasonable cause of action, is not a substitute for proceeding by way of demurrer. If there is a serious legal question to be determined, it should ordinarily be determined at a trial for the proof of facts may sometimes

> assist the judicial mind to understand and apply the law that is invoked and to do so in circumstances more conducive to decide a real case involving actual litigants rather than one determined on imagined or assumed facts.
>
> ..... It is clear that proceedings within the concept of the pleading under scrutiny are doomed to fail, the court should dismiss the action to protect the defendant from being further trouble, to save the plaintiff from further costs and disappointment and to relieve the court of the burden of further wasted time which could be devoted to determination of claims which have legal merit.'

14. In paragraph 8 of the statement of claim the Plaintiff admits that the retirement benefit was granted at the discretion of the management, which meant that the retirement benefit was granted at the discretion of the Defendant. Since it is admitted by the Plaintiff, the discretion of the management cannot be questioned in a civil suit and there cannot be promissory estoppel /equity for the claim for retirement benefit. Without prejudice to what was stated above I will consider the issue of promissory estoppel.

15. It is a trite law that only in plain and obvious cases that the strike out is granted. It is of no use to continue if the claim is doomed to fail. The plaintiff is claiming promissory estoppel/equity for the retirement benefit. The distinction between the common law and equitable estoppel was discussed in Commonwealth Bank of Australia v Carotino (Australia) Pty Ltd [2011] SASC 42 as follows;

> '139. In the New South Wales Court of Appeal in Silovi Pty Ltd v Barbara (1988) 13 NSWLR 466, Priestly JA set out the distinction between common law and equitable estoppel as derived from the High Court decision in Waltons Stores (Interstate) Ltd v Maher [1988] HCA 7; (1988) 164 CLR 387, Priestly JA made seven points relevantly including the following four;

1. Common law and equitable estopple are separate categories, although they have many ideas in common.
2. Common la estoppel operates upon a representation of existing fact, and when certain conditions are fulfilled, establishes a state of affairs' by reference to which the legal relation between the parties is to be decided. This estoppel does not itself create a right against the party estopped. The right flows from the court's decision on the state of affairs established by the estoppel.
3. Equitable estoppel operates upon representations or promise as to future conduct, including promises about legal relations. When certain conditions are fulfilled, this kind of estoppel is itself an equity, a source of legal obligation.
4. Cases described as estoppel by encouragement, estopped by acquiescence, proprietary estoppel and promissory estoppels are all species of equitable estoppel."

C. PROMISSORY ESTOPPEL

16. In Halsbury's Law of England (vol 16(2)(Reissue) defines the word 'estoppel' in the following manner

> **951. Meaning of 'estoppel'.**
> 'Estoppel' has been described as a principle of justice and of equity which prevents a person who has led another to believe in a particular state of affairs from going back on the words or conduct which led to that belief when it would be unjust or inequitable (unconscionable) for him to do so[1]. The person making the statement, promise or assurance is said to be estopped from denying or going back on it; 'estopped' means 'stopped'[2].

The doctrine of estoppel has developed in a number of separate areas, both common law and equitable, as described below[3]. Estoppel by record, although included in the estoppels discussed in this title, is more properly regarded as part of the law of evidence[4]; other estoppels have been described as rules of evidence[5] but, with the possible exception of estoppel by deed[6], are more correctly viewed as substantive rules of law[7]. The extent to which estoppel, with the exclusion of estoppel by record, can be viewed as one general principle or area of law is uncertain[8] but it has been described as one of the most flexible and useful doctrines in the armoury of the law[9]. With the exception of proprietary estoppel[10], **estoppel cannot be used as a cause of action**[11], but it may ensure the success of a cause of action by preventing a party from alleging or proving in legal proceedings that a fact is otherwise than it has been made to appear.(emphasis added)

1 See *Moorgate Mercantile Co Ltd v Twitchings* [1976] QB 225 at 241, [1975] 3 All ER 314 at 323, CA, per Lord Denning MR; revsd on another point [1977] AC 890, [1976] 2 All ER 641, HL.2*McIlkenny v Chief Constable of West Midlands Police Force*[1980] QB 283 at 316, [1980] 2 All ER 227 at 235, CA, per Lord Denning MR; affd sub nom *Hunter v Chief Constable of West Midlands Police*[1982] AC 529, [1981] 3 All ER 727, HL. 'Estoppel is when one is concluded and forbidden in law to speak against his own act or deed, yea, though it be to say the truth': Termes de la Ley, Estoppel (cited in *Ashpitel v Bryan* (1863) 3 B & S 474 at 489; *H v H*[1928] P 206 at 214); *Simm v Anglo-American Telegraph Co, Anglo-American Telegraph Co v Spurling* (1879) 5 QBD 188 at 202, CA, per Bramwell LJ; *Re Sugden's Trusts, Sugden v Walker* [1917] 1 Ch 510 at 516 per Neville J; on appeal [1917] 2 Ch 92 at 97, CA, per Bankes LJ. The term is thought to be derived from the old

French term 'estoupail' meaning a bung or cork: see Co Litt 352a.3 See para 952 et seq post.4 See eg *K v P (Children Act proceedings: estoppel)* [1995] 2 FCR 457, [1995] 1 FLR 248; and civil procedure vol 12 (2009) paras 1168–1173. As to estoppel by record see paras 953, 964 et seq post. Cf, however, *Mills v Cooper* [1967] 2 QB 459 at 469, [1967] 2 All ER 100 at 110, DC, per Diplock LJ ('Whatever may be said of other rules of law to which the label of "estoppel" is attached, "issue estoppel" is not a rule of evidence').5 'Estoppel is only a rule of evidence; you cannot found an action upon estoppel': *Low v Bouverie* [1891] 3 Ch 82 at 105, CA, per Bowen LJ and at 101 per Lindley LJ to same effect, cited by Hodson LJ in *Lyle-Meller v A Lewis & Co (Westminster) Ltd*[1956] 1 All ER 247 at 252–253, [1956] 1 WLR 29 at 39–40, CA; *Re Ottos Kopje Diamond Mines Ltd*[1893] 1 Ch 618 at 628, CA per Bowen LJ; *Harriman v Harriman*[1909] P 123 at 144, CA, per Farwell LJ; *Brandon v Dowager Baroness Michelham* (1919) 35 TLR 617; *Re Sugden's Trusts, Sugden v Walker* [1917] 1 Ch 510 (on appeal [1917] 2 Ch 92, CA); *H v H*[1928] P 206; cf *Dickson v Reuter's Telegram Co* (1877) 3 CPD 1, CA; *Combe v Combe*[1951] 2 KB 215, [1951] 1 All ER 767, CA. Proprietary estoppel may, however, now be a cause of action with regard to an interest in land: see para 1089 post. The jurisdiction of a court of limited jurisdiction cannot be enlarged by any form of estoppel: *Standing v Eastwood & Co* (1912) 106 LT 477 at 478, CA; *Dutton v Sneyd Bycars Co Ltd* [1920] 1 KB 414 at 420, CA; *Simpson v Crowle* [1921] 3 KB 243 at 253. 6 As to estoppel by deed see paras 954, 1011 et seq post; and see civil procedurevol 11 (2009) paras 964.7*Canada and Dominion Sugar Co Ltd v Canadian National (West Indies) Steamships Ltd*[1947] AC 46 at 56, PC.8 See *Amalgamated Investment and Property Co Ltd (in liq) v Texas Commerce International Bank Ltd* [1982] QB 84 at 122, [1981] 3 All ER 577 at 584, CA, per Lord Denning MR; and see *First National Bank plc v*

Thompson [1996] Ch 231 at 235, [1996] 1 All ER 140 at 144, CA, per Millett LJ; *Scottish Equitable plc v Derby*[2001] EWCA Civ 369 at [48], [2001] 3 All ER 818, [2001] 2 All ER (Comm) 274 per Robert Walker LJ. For a suggested new terminology dividing estoppels, other than estoppel by record, into formal estoppels and reliance-based estoppels see Cooke *The Modern Law of Estoppel* (OUP, 2000) p 69. For a contrary view see e.g. Wilken and Villiers *Law of Waiver, Variation and Estoppel* (2nd Edn, 2002). 9 *Amalgamated Investment and Property Co Ltd (in liq) v Texas Commerce International Bank Ltd* [1982] QB 84 at 122, [1981] 3 All ER 577 at 584, CA, per Lord Denning MR.10 As to proprietary estoppel see para 1089 et seq post.11 See eg *Moorgate Mercantile Co Ltd v Twitchings* [1976] QB 225 at 241, [1975] 3 All ER 314 at 323, CA, per Lord Denning MR.

Promissory estoppel according to Snell's Equity (29th Edi-3rd impression 1994) at page 570 state as follows

> 'During the nineteenth century equity extended the doctrine of estoppel to cases where instead of a representation of an existing fact there was a representation of intention or promise. More recently, this extension became prominent in a sequence of cases following the obiter statement by Denning J in Central London Property Trust Ltd v High Tree House Ltd., though these cases "may need to be reviewed and reduced to a coherent body of doctrine by the courts."

The doctrine

(a) The rule, Where by his words or **conduct** one party to a transaction freely makes to the other an unambiguous promise **or** assurance which is intended to affect the **legal relations between them** (whether contractual or otherwise) a, and before it is

> withdrawn, the other party acts upon it, altering this position to his detriment, the party making the promise or assurance **will not be permitted to act inconsistently with it**. It is essential that the representor knows that the other party will act on his statement. Yet the conduct of the party need not derive its origin only from the encouragement of representation of the first; the question is whether it was influenced by such encouragement or representation." (emphasis is added)

17. The contents in the pleadings cannot be examined fully in an application for strike out based on Order 18 rule 18 1(a) as no evidence is admissible by way of affidavit. In the circumstances the allegations contained in the statement of claim needs to be accepted as it is proved by the Plaintiff and conflicting facts need not be considered at this stage. If conflicting facts needs consideration for this application the summons for strike out would fail. The Plaintiff in paragraph 12 stated that he was aware of the retirement benefit while working for the Defendant and also stated that it was an inducement for the Plaintiff to remain with the Defendant. He also stated that two of the managerial personnel retired from service with the Defendant and they were paid retirement benefit by the Defendant. This payment is admitted by the Defendant in the statement of defence, but stated those payments were not retirement benefits but a payment paid at the discretion of the management.

18. At paragraphs 14 &15 of the statement defence Plaintiff stated as follows

> "14. Knowing that these senior management employees had received a payment upon retirement led the Plaintiff to believe he would receive a similar payment upon retirement and encouraged the Plaintiff to consider retirement sooner rather than later, and also reinforced his loyalty to the Company.

> 15. The Plaintiff continued to work for the Company, based in part on the promise or expectation of this executive retirement benefit."

19. There was a change of hands of the ownership of the company as there was a merger of two companies and what constituted the merged company and the policy of the newly merged entity is not available at this stage, but paragraph 19 of the statement claim stated correspondence received from the Defendant on 5th April, 2000 referring to merger was consistent with the non receipt of the retirement benefit under the merged entity. The Plaintiff in the stamen of claim stated that he was told that he might not receive the retirement benefit because of the merger. So, at this time he believed that he would not receive any retirement benefit so there was no ambiguity or any promise due to the conduct of the Defendant and or the merged entity or its new owners regarding the retirement benefit. The Plaintiff was aware of the merger and the correspondence received on 5th April, 2000 was consistent with the said policy. Though no exact time period was given in the statement of claim but it is clear that when he was told that he might not receive a retirement benefit by the then General manager, by then General Manager, Andrew Macdonald, the Plaintiff believed what was stated (see paragraph 19 of the statement of claim)

20. But when a new manager (Mr. Murphy) assumed duties again the Plaintiff had again inquired about the retirement benefit and was told that something was on the pipeline meaning that the retirement benefit was under consideration by the management. The Plaintiff in the paragraph 23 states as follows

> '23. On that basis, the Plaintiff took Mr. Murphy's representation that something was in the pipeline to mean that the Plaintiff would receive a retirement benefit, as otherwise the Defendant would have simply informed that the Plaintiff would not receive any retirement benefit. The Defendant knew or should have known that the Plaintiff would rely on this representation in deciding to retire when he did.'

21. In China-Pacific SA v Food Corporation of India; The Winson [1980] 3 All ER 556 at 566 -567 held

> 'The supposed representation is not, and cannot be dressed up as being, a representation of fact. If it were a representation by the cargo owners, 'we are liable', it would, in the dichotomy which has been drawn for this purpose, be a representation of law. If what was said is to be construed as 'we will pay', it would be a promise. The salvors could, indeed, succeed on this issue only if this were properly to be treated as a promissory estoppel. But, for a promissory estoppel, apart from other conditions, it has to be shown that there is something which is a quite unequivocal statement.
>
> I would refer to a passage in the textbook Estoppel by Representation by Spencer, Bower and Turner (3rd Edn, 1977, p 375, para 347), where, in the chapter dealing with promissory estoppel, this is said:
>
> 'While a representation of existing fact is necessary for the foundation of a true estoppel, the words or conduct necessary to support a promissory estoppel are essentially different in quality. They consist of a promise or assurance as to the future conduct of a promisor, on which the promisee relies to act to his detriment. Not only does this follow ex vi termini from the very term "promissory estoppel", but it is clearly stated as a principal attribute of the estoppel in the cases from which the doctrine takes its origin.' (Author's emphasis.)'
>
> Then there are citations from Central London Property Trust Ltd v High Trees House Ltd [1956] 1 All ER 256, [1947] KB 130 and other cases.
>
> The learned editor goes on (at p 376):

> 'When promissory estoppel is invoked, the promise or assurance necessary to support it is inevitably less than a promise binding upon the parties in contract—it would not be necessary to invoke the doctrine of promissory estoppel at all if the promise had contractual force. But nevertheless the promise supporting a promissory estoppel is closely analogous in many respects to a promise having contractual effect. One of its essential attributes is the same degree of unequivocality which, if the same assurance had been given full consideration, would have clothed it with contractual effect. This was the rock upon which the plea of promissory estoppel foundered, both in the Court of Appeal and in the House of Lords, in Woodhouse A.C. Israel Cocoa S.A. v. Nigerian Produce Marketing Limited ([1972] 2 All ER 271, [1972] AC 741). In his judgment in the Court of Appeal ([1971] 1 All ER 665 at 672, [1971] 2 QB 23 at 59–60) LORD DENNING M.R. referred to the "extraordinary consequences" of holding that an assurance ineffectual (by reason of its indefiniteness) to vary a contract was yet definite enough to support a promissory estoppel bringing about the same result.'

22. In order to establish promissory estoppel the degree of unequivocality is essential. When the Plaintiff was told he might not receive any retirement benefit he did not peruse the issue beyond that point with the then General manager who intimated this fact to him, but waited till his departure and inquired again about the retirement benefit from Mr. Murphy and was told that something was on the pipeline. This cannot be considered as unequivocal promise. The Plaintiff's cause of action is based on promissory estoppel and this is expressly pleaded in paragraph 36 of the statement of claim. There is no other equitable relief though in the amended statement of claim though he had included equitable estoppel as an alternate relief. If the Plaintiff fails to establish a reasonable cause of action for promissory estoppel the action needs to be struck off. The promissory estoppel is pleaded in paragraph 36. This is

referred to the paragraph 23 of the statement of claim which refers to Mr. Murphy's alleged statement what something is in the pipeline.

23. In the circumstances the statement of Mr. Murphy that something was on the pipeline cannot be considered as an unequivocal promise that the Plaintiff would receive a retirement benefit. The Plaintiff did not sought any clarification on the said statement and he was not given any retirement benefit and remained silent for over 5 years, indicating that there was no promise or misrepresentation by the management at the time of the retirement of the Plaintiff. This action is obviously an afterthought after nearly 6 years from the retirement. Considering the pleadings as they are I cannot see even a slight possibility of Plaintiff succeeding in an action for promissory estoppel upon the proof of the facts stated in the statement of claim. I did not consider the facts stated in the statement of defence except to the facts expressly admitted. The Defendant had referred to a "Terms and Conditions of Employment" approved in 1996 which expressly deals with the retirement benefit and according to the said 'Policy' the Plaintiff would not have received any retirement benefit, but for the present application I did not consider those facts stated in the statement of defence.

D. CONCLUSION

24. The Plaintiff had admitted in paragraph 8 of the statement of claim that retirement benefit was given at the discretion of the management of the Defendant. If so there cannot be a promissory estoppel or a claim based on equity. Even if am wrong on that the Defendant had not unequivocally promised the Plaintiff of retirement benefit. According to the statement of claim the Plaintiff was informed prior to the retirement by the then General Manager that he may not receive a retirement benefit. The successor to the said General Manager allegedly stated that something was in the pipeling, but this is not an unequivocal promise. This is not a promise to grant retirement benefit at all, and if so there should be an amount or time period needs to be specified. Without any such calculations a retirement benefit cannot hang in air, with uncertainty as to its amount and the modalities of calculation. The Plaintiff being a person holding managerial position would know this kind of statement

cannot create any obligation to the Defendant. Even on objective test such vague and uncertain statement cannot create any equitable or promissory estoppel as pleaded in paragraph 36 of the statement of claim. I cannot think about any possible other right that the Plaintiff could claim from the Defendant. After this summons for strike out was filed the Plaintiff was given an opportunity to amend its pleadings, but the Plaintiff had not amended the claim substantively, indicating that the Plaintiff had exhausted its options fully. The amended statement of claim is doomed to fail and needs to be struck off. I assess the cost of this application summarily at $1,000.

E. FINAL ORDERS

a. The Plaintiff's statement claim is struck off.
b. The cost of this application is summarily assessed at $1,000.

Dated at **Suva** this **30th day** of **August, 2013**.

.....

Justice Deepthi Amaratunga

High Court, Suva