

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 11 of 2009

BETWEEN : **PHILLIP ANDREW JOHN WHITE & KATHERINE ALEX WHITE** of
Apartment 17, Arts Village, Pacific Harbour, Deuba, Fiji Islands, Freelancer
and Teacher respectively.

PLAINTIFFS

AND : **TIM TOWERS** of 9 Algana Street, Labrador 4215, Queensland, Australia.

DEFENDANT

BEFORE : **Master Thushara Rajasinghe**

COUNSEL : **Mr. O'Driscoll G.** for the Plaintiff
Mr. Knight P. I. for the Defendant

Date of Hearing : 24th & 28th March, 4th & 9th April, 2014
Date of Ruling : 23rd September, 2014

RULING

A. INTRODUCTION

1. This is a Summons filed by the Plaintiff for the assessment of damages. This Summons was heard on 24th, 28th of March and 4th, 9th of April 2014. The Plaintiff called 3 witnesses including himself and tendered 9 documents as plaintiff's evidence during the cause of the hearing. The Defence then called 4 witnesses and tendered 10 documents as defence evidence. At the conclusion of the hearing both counsel were invited to tender their written submissions, which they filed accordingly. Having carefully considered the evidence presented before me and the respective written submissions of the parties, I now proceed to pronounce my ruling as follows.

2. The Plaintiff instituted this action by way of a writ of summons seeking following orders, inter alia that.

- i. *The Sum of FJD 180,000,*
- ii. *Displacement expenses,*
- iii. *Damages for distress and inconvenience,*
- iv. *Interest,*
- v. *Cost on a solicitor – client basis,*
- vi. *Such further or other order as this honourable court considers appropriate,*

3. I do not wish to discuss or reproduce the chronological background of this action and the evidence presented by the parties as it has been well documented in the judgment delivered by the Fiji Court of Appeal and the case record respectively. Having carefully considered the background of this action and the evidence presented by the parties, I now turn to analysis the evidence presented before me in order to conclude my assessment of damages of the Plaintiff's claim.

4. This is the Plaintiff's claim to recover the cost for the replacement of his house which was damaged due to the fire. In view of the evidence presented by the parties, it appears that the house constituted with two levels. The ground level had no constructions and only consisted with the poles which held the top level. The top level consisted with one bed room, bathroom, store room, open kitchen and open area. There was an open deck around the main house with mangroves railings. Moreover, there were 11 units of glass windows and sliding doors around the house. It had a solar system which provided electricity to the house.

5. The Plaintiff tendered two estimated quotations for the cost of rebuilding the house during the cause of the hearing. The first quotation is from Active Construction & Joinery Ltd, where they have quoted \$329,130, which includes the material and labour cost of \$265,000, Contractor's profit margin of \$ 21,200, and 15% Vat of \$42,930. The quotation has not provided details of the materials and the breakdown of the cost. It has simply stated the full amount without any further specification. The sources of those figures are not provided. Hence, this quotation does not carry much credence in order to

support the Plaintiff's claim. The second quotation is from a building contractor by the name of Leone Yaragamudu, where he quotes \$393,900. Once again, I find the similar discrepancies as I stated in respect of the first quotation of the Plaintiff.

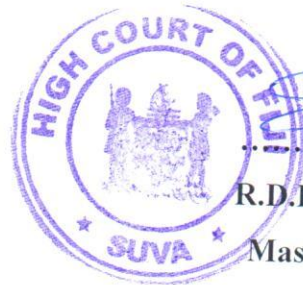
6. The Defendant provided two quotations. One is from Avind's Construction, where it has quoted \$ 180,000. Mr. Avind Prasad from Avind's Construction stated during the cause of his evidence, that his estimation is based on the standard price for a one square meter. The second quotation is from the Defendant himself. He quotes \$ 115,000. Furthermore, an estimated cost and the quantities of the materials were tendered through a report made by Mr. Nepote Gudru Masau who is a licensed quantity surveyor. Having carefully considered all these quotations tendered by the Plaintiff and the Defendant, it appears that the Plaintiff did not dispute the list of materials and its quantities as provided in the report of Mr. Nepote Gudru Masau, though the learned counsel for the Plaintiff has extensively questioned the price of timbers quoted in his report.
7. I find Mr. Masau is a qualified quantity surveyor. I accept his report in respect of the list of materials and its quantities. The Plaintiff has also obtained two separate quotations of cost from R.C. Manubhai & Co Ltd, and Vinod Patel Co. Ltd for the materials and quantities give by Mr. Masau. It appears that these three quotations have different pricings, though they are not considerably different from each other. I draw my attention to the prices of the timber in the two quotations given by the Plaintiff, which are higher than Mr. Masau's. Having considered Mr. Masau's inability to precisely provide the source of his pricing for the timber, it is my opinion that the actual cost of the materials listed by Mr. Masau's report would be around \$ 115, 000. I accordingly hold the cost of materials for the rebuilding of the house is \$ 115, 000.
8. Plaintiff failed to provide any precise evidence of cost of labour, neither did the Defendant apart from his own quotation. The Defendant quote \$20,000 for the cost of labour. None of the quotations tendered by the Plaintiff have specified the labour cost. Under such circumstances, it appears to me, that I have to rely on the Defendant's estimation. I add further \$ 10,000 to his quotation, which I find more considerate cost for the labour. I accordingly reach to a figure of \$ 30,000 for the cost of labour. Accordingly

the cost to rebuild the house is \$ 145,000 which includes the cost of materials and labour. I give 8% for the contractor's profit margin, which is \$11,600. The VAT amount would be \$23,490. I now have the total cost of \$ 180, 090 to rebuild the Plaintiff house.

9. I now turn to determine the cost of glass windows and sliding doors. The Defendant admitted that his first estimation was founded on his recollection of memories of the house. However, he subsequently provided a quotation of \$22,750. Meanwhile, the Plaintiff quotes \$34,500. The Plaintiff later admitted that the house had only 11 units of glass doors and windows and not 12 units. In view of these findings, I reach to a figure of \$30,000 for the cost of 11 units of glass sliding doors and windows.
10. The Defendant did not dispute the cost of Solar System, which is \$15,138. I accordingly have reached to a figure of \$225,228 as the total cost to rebuild the house of the Plaintiff.
11. The Plaintiff and the Defendant have no dispute about the monthly rental paid by the Plaintiff during the period of two years, which was \$580. Accordingly the Plaintiff has incurred a cost of \$13,920 for the displacement expenses.
12. In respect of the damages for distress and inconvenience, the Plaintiff stated that this incident adversely affected his marriage, though he did not specify how it was. He further stated that he had to go through a demanding and hard period after this incident. Having considered the evidence of the Plaintiff, I award him \$10,000 for the damages for distress and inconvenience.
13. In my conclusion, I make following orders,
 - i. The Plaintiff is hereby awarded a sum of \$225,228 to rebuild the house together with an interest at the rate of 5% p.a from the date of this order until the payment is made in full.
 - ii. The Plaintiff is awarded a sum of \$ 13,920 for the displacement expenses together with an interest at the rate of 5% p.a from the date of this order until the payment is made in full.

- iii. The Plaintiff is awarded a sum of \$10,000 for the damages for distress and inconvenience, together with an interest at the rate of 5 % p.a from the date of this order until the payment is made in full.
- iv. The Plaintiff is awarded a sum of \$ 4,500 for the cost of this proceedings, which was assessed summarily.

Dated at Suva this 23rd day of September, 2014.



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R.D.R. Thushara Rajasinghe
Master of High Court, Suva