

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA, FIJI ISLANDS

CIVIL CASE NO.: HBC 102 of 2006

BETWEEN : **DAVID SAILESH CHANDRA** of Kara Punja Road, Lautoka.

PLAINTIFF

A N D : **THE MILLENIUM PLANT COMPANY (FIJI) LIMITED** a limited liability company duly incorporated under the **Companies Act** (Cap.247, Laws of Fiji) and having its registered office at Jay Lal & Co., 21 Tui Street, Marine Drive, P O Box 343, Lautoka.

1st DEFENDANT

A N D : **ANITA SUBAMMA** of Vatualevu, Nadi, as the executor and Trustee of the Estate of **UMENDRA JIT CHAUDHARY** (Deceased) and in her personal capacity.

2nd DEFENDANT

A N D : **LITIA NAMOTU CHAUDHARY** of Nasoso, Nadi.

3RD DEFENDANT

Appearances:

Mr A. Dayal for the Plaintiff

Mr Roopesh Singh for the 1st and 2nd Defendants

JUDGMENT

1.0 **Introduction**

1.1 The Plaintiff in this action submits that sometimes in August, 2003 one Umendra Jit Chaudhary entered into an oral agreement and promise to sell the 1st Defendant company to the Plaintiff for a sum of \$240,000.00.

However, the Courts of Fiji have said from time to time that the jurisdiction to strike out proceeding under Order 18 Rule 18 should be very sparingly exercised. In ***Attorney General vs Shiu Prasad Halka [1973] 18 FLR 210 at 215*** Marsack JA said:

“Following the decisions cited in the judgments of the Vice President and of the Judge of the Court below I think it is definitely established that the jurisdiction to strike out proceedings under Order 18 Rule 19 should be very sparingly exercised, and only in exceptional cases. It should not be so exercised where legal questions of importance and difficulty are raised.”

2.0 **The Facts**

Statement of Claim

- 2.1 One Umendra Jit Chaudhary, offered to sell the 1st Defendant company to the Plaintiff for a sum of \$240,000.00. The Plaintiff was unable to pay the entire purchase sum and as such it was agreed that the Plaintiff will pay a deposit of \$10,000.00 over a period of 3 months. The 3rd Defendant was a Director and Shareholder of the 1st Defendant and was also its Chairperson. The 2nd Defendant is the Executor and Trustee of Umendra Jit Chaudhary who died on or about the 10th November, 2003.

The deceased Umendra Jit Chaudhary and the 3rd Defendant agreed and/or promised the Plaintiff that he could pay the deposit by working for the 1st Defendant by crediting all his income towards the deposit and later the purchase price. The Plaintiff commenced work with the 1st Defendant on or about the 14th of October, 2003 together with 8 workers and as part of the agreement he bought some machinery and equipment into the business which belongs to him. On or about the 11th November,

2003 the 2nd Defendant in her personal capacity asked the Plaintiff to close the workshop of the 1st Defendant until further notice. On or about the 20th November, 2003 the 2nd Defendant purporting to act on behalf of the 1st Defendant and on behalf of the deceased closed the workshop and demanded that the Plaintiff and his workers clear the factory premises in breach of the agreement and promise made by the deceased. On or about 24th November, 2003 the 2nd Defendant approached the Plaintiff to seek a settlement of the dispute that had arisen and it was agreed that the matter will be resolved at the Solicitors Office. On or about the 28th November, 2003 the Plaintiff entered into a further agreement with all the Defendants for the purchase of the 1st Defendant and Memorandum of Agreement was prepared by Solicitors, but the Plaintiff refused to sign it as it did not take into account the payments already made by the Plaintiff. The agreement allowed an extension of the time to pay the \$10,000.00 deposit being counted from the 28th November, 2003.

In accordance with the agreement reached the Plaintiff once again commenced work with the 1st Defendant and the deposit was duly paid. He paid a further sum of monies on reliance of the promise including a sum of \$7,000.00 to stop a mortgage sale and further income from the business. After paying the deposit the Plaintiff requested and demanded that a Sale and Purchase be entered into as agreed but the Defendants in breach of their obligations refused to do so. On or about the 17th May, 2004 the Defendants in breach of the agreement reached closed the workshop run by the Plaintiff and seized all Plaintiff's goods. As a result the Defendants have acted unfairly and are in breach of Sections 54, 55 and 56 of the Fair Trading Decree 1992 and the Plaintiff was also out of work and lost the opportunity to make an income from the 1st Defendant.

2.2 The Statement of Defence and Counter Claim

The Defendants denying each and any allegation in the Statement of Claim states that the Plaintiff was working for the 1st Defendant as an employee. The 2nd Defendant asked the Plaintiff to close down the workshop of the 1st Defendant until further notice; and the 2nd Defendant closed the workshop. The Plaintiff was unable to produce any documents and/or agreement between the Plaintiff and the deceased Umendra Jit Chaudhary to substantiate his claim when requested by the 2nd Defendant and there was also no such documents with the 1st Defendant Company. 1st and 2nd Defendants agreed to have meetings with the Plaintiff at their Solicitors office on the request of the Plaintiff despite the Plaintiff failing to produce any agreement as alleged by him but the Plaintiff failed to attend the meeting. Draft Agreement was drafted by Plaintiff's Solicitors which was never entered between the Plaintiff and the Defendants due to other differences between the parties. Plaintiff was once again employed by the 1st Defendant but denies that was in accordance with any agreement reached between the Plaintiff and also denies a deposit being paid by him. The 2nd Defendant closed the workshop of the 1st Defendant after consultation with the 3rd Defendant, it was closed as the 1st Defendant Company continued to accumulate debts as it failed to generate income to pay the existing mortgage. The Plaintiff whilst in employment with the 1st Defendant registered a Sole proprietorship business/firm similar to the 1st Defendant and used 1st Defendant's monies, material and labour and deposited the monies that were generated by the 1st Defendant into his business account. Due to the aforesaid reason 1st Defendant suffered loss and damages. The Plaintiff also removed items worth more than \$17,490.88 from the 1st Defendant's premises. The Defendants pray that the Plaintiff's Claim be dismissed with costs and enter judgment against him in the sum of

\$17,490.88 and General Damages with interest and costs on indemnity basis.

3.0 **Analysis and Determination**

3.1 From the facts mentioned as above it is evident that the Plaintiff is basing his claim for damages on a promise made by one Umendra Jit Chaudhary now deceased. In other words the Plaintiff's claim is based on a promissory estoppel principle of justice and of equity.

3.2 **Osborne Concise Law Dictionary 11th edition at page 171 estoppel** is defined in the following manner:

"A rule of evidence which precludes a person from denying the truth of some statement made by him of the existence of facts whether existing or not which he has by words or conduct led another to believe in. If a person by a representation induces another to change his position on the faith of it, he cannot afterwards deny the truth of his representation.

- (1) *Estoppel by record; a person is not permitted to dispute the facts upon which a judgment against him is based.*
- (2) *Estoppel by deed; a person cannot dispute his own deed; he cannot deny the truth of the recitals contained in it.*
- (3) *Estoppel in pais, or equitable estoppel or estoppel by representation; estoppel by conduct. Anciently estoppel in pais arose from some formal act which established relations between parties.*

(4) *Promissory estoppel: one arising from a promise as to future conduct.*

3.3 **Spencer Bower and Turner in their work “Law Relating to Estoppel by Representation” 3rd edition 1977 p376** said:

*“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 E.R. 271 HL. In his judgment in the Court of Appeal [1971] 1 All E.R. 665 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.”*

[emphasis added]

3.4 It is clear from the above authority that it is necessary to have the same degree of unequivocality which would have a contractual effect in order to establish promissory estoppel.

- 3.5 In this matter Plaintiff pleads that the deceased promised him the sale of the business for \$240,000.00. He states he was unable to pay the entire purchase sum and such it was agreed that he will pay a deposit of \$10,000.00 and that he could pay the deposit by working for the 1st Defendant by crediting all his income towards the deposit and later the purchase price. He also states as part of the agreement he bought some machinery and equipment to the business. It is further pleaded that on or about 28th of November, 2003 the Plaintiff entered into a further agreement with all the Defendants for the purchase of the 1st Defendant. He says that a Memorandum of Agreement was prepared by the Solicitors' Office but he refused to sign it as it did not take into account the payments already made by the Plaintiff and that the agreement allowed an extension of the time to pay the \$10,000.00 deposit being counted from the 28th November, 2003. He pleads further that in accordance with the agreement reached he once again commenced work with the 1st Defendant and paid the deposit.
- 3.6 It is evident from the Plaintiff's own pleadings that there was a promise made by the deceased and it was later varied. He admits that he did not sign the Memorandum of Agreement with the Defendant incorporating the terms and conditions of the varied promise but he commenced work with the 1st Defendant in accordance with the agreement which he never signed.
- 3.7 It is also clear from the Plaintiff's pleadings that there was a dispute in regard to the payments made by the Plaintiff when he went to enter into the 2nd agreement and therefore he did not sign it. That alone shows that there was no agreement reached between the Plaintiff and the Defendants to vary a promise made earlier. As such it is evident that the varied promise the Plaintiff is now relying on was not unequivocal or the promise is not free from ambiguity. The Defendants admit that the

Plaintiff was once again employed by the 1st Defendant and state that the draft agreement drafted by Solicitor was never entered between the Plaintiff and the Defendants due to other differences between the parties. Therefore I find that the Plaintiff had not pleaded of an unequivocal promise in his Statement of Claim although he has based his claim on promissory estoppel.

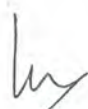
3.8 For the reasons stated herein above I make the following orders:

- (a) The Plaintiff's Statement of Claim is struck out and dismissed.
- (b) The Plaintiff to pay costs summarily assessed in a sum of \$500.00 to each Defendant.
- (c) The Defendants are at liberty to proceed with the Counter Claim against the Plaintiff.



At Lautoka

10th May, 2016


Lal S. Abeygunaratne
[Judge]