

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 235 of 2014

BETWEEN : CARPENTERS FIJI LIMITED trading as CARPENTERS
HARDWARE

Plaintiff

AND : FIJI REVENUE AND CUSTOMS AUTHORITY

Defendant

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr E. Narayan, Ms K. Singh with him, for the Plaintiff
Ms T. Rayawa, Ms F. Gavidu with her, for the Defendant

Date of Hearing : **7 November 2016**

Date of Judgment : **28 July, 2017**

JUDGMENT

1. This is a claim made against the Defendant but it is not a claim relating to revenue. Instead as the Statement of Claim discloses, the Plaintiff is claiming the sum of \$482,193.60 for works undertaken for and material supplied to the Defendant which the latter has failed to pay.

2. The Defendant in its Defence contends as follows:
 - (1) The supply and installation of the workstation and furniture were not in conformity with the specifications and presentation given to the Defendant by the Plaintiff.
 - (2) It has paid the contract amount owed to the Plaintiff. The only amount yet to be paid is the sum of \$297,251.00 which it says the Plaintiff is not entitled to because there was short supply by the Plaintiff of the items.

3. The Minutes of the Pre-Trial Conference show the following:

THE AGREED FACTS: include:

- 1) The Defendant's agent and contractor, Metalworks & Joinery Ltd (Metalworks) on 18 March 2009, wrote to the Plaintiff that Yellow Architect instructed them that the Plaintiff had been awarded the tender for the supply and installation of workstation and furniture at the contract value of \$3,150,000 (VIP).

The Issues to be Determined include:

- 1) Whether the Plaintiff undertook and completed the supply and installation of the workstations and furniture in conformity with the Agreement, as varied.
 - 2) Whether the Defendant has failed to pay the Plaintiff the balance of monies owed in respect of the work undertaken in conformity with the agreement.
4. The hearing commenced with the Plaintiff's operations manager, Mayur Singh (PW1) giving evidence. He said the Plaintiff supplied loose furniture and floor tile carpets. The Defendant paid for them but some payments are outstanding.

 5. At this juncture, Counsel for the Defendant confirmed she was not disputing the invoices.

6. PW1 continued that there was a variation in the cost due to the increase in landing costs as a result of the devaluation of the Fiji dollar. The total amount due from the Defendant is \$482,193.60.
7. When cross-examined by the Counsel for the Defendant, PW1 said he had been the financial controller of the Plaintiff since 2010 and was familiar with the claim. The tab 48 – Exhibit P3- had been prepared by their accountant and checked by him. This has been audited but not endorsed. It is a draft report. He said the tender is for the supply and installation of loose furniture and workstations and they have supplied everything to the Defendant.
8. In re-examination, PW1 said the table showed payments were made for both tile carpets and loose furniture fittings. \$482,193.60 remained to be paid.
9. The next witness was Daniel Kingston Whippy (PW2), a director of the Plaintiff's since 2000. The furniture was purchased and the supplier came to Fiji and installed the furniture in the Revenue Building. The Defendant did not pay the last progress claim as they were disputing it. The then C.E.O. of the Defendant, Jitoko Tikolevu, said he wanted a discount and wanted to pay ½ of the last claim, which PW2 refused to agree to.
10. PW2 said Metalworks were the project management team appointed by the Defendant. The Plaintiff submitted two separate bids, one for carpets and one for office furniture. Both bids were successful. He was dealing with Adish Naidu (Naidu), the principal of Yellow Architects who were the project architects. They were reporting to Naidu for the installation of the loose furniture and carpets. There were price variations due to currency fluctuations. They supplied and installed the total tender for both tenders. Naidu never came back to the Plaintiff to say some goods were not supplied or not installed. There was no correspondence from the Defendant regarding any alleged short supply.

11. Regarding para 8 of the Defence (the only amount yet to be paid is the disputed sum of \$297,251), PW2 said the Defendant never once raised the issue in writing or orally and the C.E.O. never once mentioned that what was installed was not in conformity with the tender. The Plaintiff worked in conformity with the tender. The Plaintiff replaced some chairs, locks and keys on the Defendant's complaint and addressed all the Defendant's concerns. No one from the Defendant, and not even their new C.E.O. said the Plaintiff had short supplied. The Plaintiff was only claiming the short payment of the tender amount and the price variation of \$482,193.60. They were waiving all the interest and not claiming damages.
12. Under cross-examination, PW2 said their claim includes carpets. They tendered for the supply and installation of workstations and loose furniture. The \$482,193.60 includes the amount for carpets. He denied the Defendant had paid everything except the disputed \$297,251.
13. The Defendant's Counsel referred PW2 to the Defendant's letter to the Plaintiff's solicitors dated 13 April 2010. At this juncture, the Plaintiff's Counsel objected stating it was marked "Without Prejudice", whereupon the Defendant's Counsel said she was changing the character of the letter to an open one.
14. The Court ruled that the letter could be tendered as evidence because it was a letter which merely asserted the Defendant's rights or attempted to argue that its case was well founded (see *Buckinghamshire C. C. v. Moran* [1989] 2 All E.R 225 CA.). The letter was marked for identification and later tendered as Exhibit D2.
15. In re-examination PW2 said the Defendant appeared to be disputing the cost of items and not saying they were not supplied. The \$297,251 was based not on goods not supplied but on cost variation. Nothing was short supplied by the Plaintiff.
With this the Plaintiff closed its case.

16. The Defendant opened their case with their sole witness, Ms Emily Yalimaiwai (DW1), the Defendant's Chief Information Officer. She oversaw tenders and projects. A dispute arose in 2008/9 over the supply of loose furniture and workstations, where the tender had been given to the Plaintiff. The project manager, Dinesh Singh, was responsible for the entire project. His role included ticking off what the Defendant asked for and were supplied. This was in Exhibit D1. He would check the number of items and their quality. The Defendant has paid everything under the original tender. The items not supplied or short supplied are the subject of the disputed amount. These payments are only for workstations and loose furniture and there is no outstanding amount due to the Plaintiff.
17. Under cross-examination, DW1 said the tender was also given for tile carpets. Invoices were raised for the carpets. The Defendant paid \$3,150,000. It paid everything except \$297,251. Exhibit D2 was drafted by herself and another and not by Dinesh Singh. It is listing out items supplied or not supplied. She would need to check the invoices for the carpets. She would need to confirm the tiles were installed in the Defendant's building.
18. In re-examination, DW1 said Exhibit D2 shows goods short supplied coming up to the disputed amount of \$297,251. The Plaintiff is responsible for supplying the goods tendered.
19. With that the Defendant closed its case. I then ordered both Counsel to file their written submissions. This has been done. Having perused the same, I shall now proceed to deliver my judgment.
20. This is a matter where on the one side the Plaintiff claims the Defendants owes it \$482,193.60 for works undertaken and material supplied and on the other side the Defendant states that \$297,251 is yet to be paid because there was short supply by the Plaintiff of the items.

21. At the outset, it is necessary to say, I find it inexpedient to refer to the authorities filed by the Plaintiff's solicitors because they relate to the formation of contracts when here it is crystal clear, that the sole issue is whether the goods were supplied according to the contract which both parties accept was made.
22. The Plaintiff has the burden to adduce sufficient evidence to satisfy the court on a balance of probabilities that what it is asserting is true. What the Plaintiff is asserting is that it has indeed supplied the Defendant with the balance \$482,193.60 of works undertaken and material supplied. To show this the Plaintiff led evidence by its 2 witnesses and through the documents produced. The Court found there was no real attempt on the part of the Defendant or its sole witness to rebut the Plaintiff's case. Indeed, once the Defendant admitted the invoices and chose not to call Dinesh Singh nor any witness from the project management team nor from the Architects it was clear as daylight that the Defendant did not have a leg to stand on. Further its attempt to justify its non-payment of the admitted \$297,251 to the Plaintiff collapsed to the ground when it was admitted that the letter (Exhibit D2) setting out the alleged short supply was drafted by DW1 and another, who had no personal knowledge of what was entailed and not by Dinesh Singh who admittedly knew everything about the matter. This lack of personal knowledge was further shown when DW1 said she needed to check and confirm certain invoices and items.
23. Further if Exhibit D2 (\$297,251) could be drafted, to allegedly show what had not been supplied, why did the Defendant not do the same for the rest of the claim i.e the sum of \$184,942.60 ($\$482,193.60 - \$297,251$) ? At the end of the day the Court finds that the Plaintiff has succeeded in proving its entire claim on a balance of probabilities.
24. In the result, I enter judgment for the Plaintiff and order the Defendant to pay the Plaintiff the sum of \$482,193.60 together with interest thereon at the rate of 4% per annum from the date of judgment to the date of realization and \$2,000 as costs summarily assessed.

25. For clarification I state that no prejudgment interest has been awarded as the Plaintiff's witness (PW2) expressly waived all interest. However the Plaintiff is entitled to post judgment interest by statute at the rate of 4% p.a.

Delivered at Suva this 28th day of July 2017.



David Alfred
Judge
High Court, Fiji