

IN THE HIGH COURT OF FIJI AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 94 of 2016

BETWEEN : ABHINDRA SINGH

Plaintiff

AND : KAMLA WATI and PRADEEP SINGH

Defendants

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr R. Harper for the Plaintiff  
Mr N. Lajendra for the First and Second Defendants

Dates of Hearing : 12 and 13 October 2017  
Date of Judgment : 6 March 2018

JUDGMENT

1. The Plaintiff in his Statement of Claim says as follows:
  - (1) The Defendants are the registered proprietors of the land held under Certificate of Title No. 24613 being Lot 3 on Deposited Plan No 2561, Levuka, Ovalau (the property).
  - (2) On 20 January 2016 the Defendants verbally agreed to sell the property to the Plaintiff and the Plaintiff verbally agreed to buy the property for the sum of \$100,000, as per the usual conveyancing practice in Fiji (verbal agreement).
  - (3) On 26 February 2016, the Plaintiff appointed Yellow Tripod Limited to conduct survey works on the property.
  - (4) In reliance on the verbal agreement, the Plaintiff instructed solicitors in Suva to prepare a Sale and Purchase Agreement (SPA) and Transfer Document for the property, and a Subsidiary Agreement (SA) relating to the subdivision and subsequent transfer of a portion of the property to the Defendants, the SA to take effect after the transfer of the property to the Plaintiff.
  - (5) On 11 March 2016 the Plaintiff and the Defendants attended at the office of a Commissioner for Oaths (Commissioner) at Levuka for the execution of the SPA and the SA. The Commissioner informed them that his Practising Certificate had expired. Consequently the parties agreed to depart for Suva on 14 March 2016 to attend to the execution of the agreements. However, on the morning of that date the Defendants informed the Plaintiff that they had decided to sell the property to their family member.

- (6) Circa early February 2016, the Plaintiff was approached by an investor who had learned of the Plaintiff's agreement to purchase the property and offered to advance \$60,000 upon the transfer of the property to the Plaintiff, which sum would represent an advance for the lease of a portion of the property, at a monthly rent of \$1,000, to commence on the transfer of the property to the Plaintiff. The Plaintiff accepted the investor's offer in February 2016.
- (7) As a result of the Defendants' conduct, misrepresentations and breach of agreement, the Plaintiff lost the business opportunity and the fees and expenses expended.

#### Particulars of Misrepresentation

Holding out that they would sell the property to the Plaintiff on or about 20 January 2016 thus inducing the Plaintiff to pay costs, fees and expenses when by their subsequent behavior it transpired this was false or misleading.

- (8) Wherefore the Plaintiff claims:
- (a) Special Damages:
    - (i) Surveyor's costs of \$3,800.
    - (ii) Surveyor's travel and accommodation costs of \$750.
    - (iii) Legal costs of \$6,000.
    - (iv) Personal travel costs to Suva of \$2,000.
  - (b) General damages of \$60,000 for lost business opportunity.

2. The Defendants in their Statement of Defence say as follows:

- (1) They never agreed nor guaranteed the sale of the property to the Plaintiff.



- (2) They did not consent to any survey.
  - (3) They never received any cash or cheque from the Plaintiff as a deposit for the property.
  - (4) As they did not intend to sell the property they did not execute the SPA. They never gave the Plaintiff any impression or indication that the property was for sale.
  - (5) If the Plaintiff had accepted an offer from a third party investor, he had done so on his own without any assurance or agreement from the Defendants that they would sell their property to the Plaintiff.
3. There was a Reply to the Defence.
  4. The Minutes of the Pre-Trial Conference dated 14 March 2017, record, inter-alia, the following:

#### Agreed Facts

- (i) The Plaintiff had been interested in purchasing a property owned by the Defendants.
- (ii) The Defendants are the registered proprietors of the property.

#### Issues for Determination

- (i) Whether the Plaintiff and the Defendant (sic) had circa 16 January 2016 discussed the potential sale of the property.
- (ii) Did the parties reach an agreement for the sale and purchase of the property and if so, on what conditions?

- (iii) Did the Defendants receive a bank cheque from the Plaintiff for \$10,000 representing the deposit to be paid to the Defendants upon the execution of the SPA.
  - (iv) Did the Plaintiff accept an investor's offer in February 2016.
  - (v) Are the losses claimed by the Plaintiff a direct result of the Defendant's actions and misrepresentations.
5. The hearing commenced with the Plaintiff (PW1) giving his evidence. He said he had dealings with the Second Defendant (Defendant) where they agreed verbally (underlining mine) on the purchase of their land. The sale could only go through if there was a survey. They were Singhs and their word is their bond. He said the Defendant agreed to sign and he (PW1) gave him a cheque for \$10,000.
6. PW1 said the solicitors drew up a SPA and transfer, on the instructions of himself and the Defendant. The solicitor, Mr Fa prepared a draft SPA and an absolute assignment. The Defendant never received the proceeds of the cheque. It was not paid to him. He, PW1, took the cheque as the witness was not qualified being "a pretended Commissioner for Oaths". He incurred expenses by way of the surveyor's fees and hotel charges and \$6,000 for legal fees for a SPA "that was never executed" (emphasis mine). Mr Fa prepared a transfer which is unsigned. "There is only a verbal agreement" (emphasis mine)).
7. Under cross-examination PW1 said that he and the Defendant never signed any instruction sheet for Mr Fa. The Defendant declined to go to Mr Fa's office. There is no (for) sale sign on the land. The Defendant did not advertise the land for sale and did not retain an estate agent, and did not have a valuation done. He



had no documentary evidence to show he offered \$100,000 and the Defendant accepted it.

8. In re-examination, PW1, said in answer to the Court, that not even once did the Defendant and himself appear in Mr Fa's office.
9. The next witness was Mr Sione Fa (PW2) a barrister and solicitor of Fiji. He said in early 2016, he was appointed by the Plaintiff to prepare a SPA which he prepared. He spoke on the telephone to the Defendant and told him that he, Fa, was representing the Plaintiff. The Plaintiff instructed him to prepare the documents. He, Fa, could not recall whether these were executed. He never saw the Defendant in his office (in answer to the Court). He said that after the Plaintiff told him the Defendant was not going through with the sale, a caveat was not lodged on the Certificate of Title.
10. Under cross-examination, Mr Fa (PW2) stated it is correct that from 1 March 2016 to 17 May 2016, he had no practicing certificate. When he prepared all these documents he had no practicing certificate. He did not tell the Plaintiff he did not have a practicing certificate. He said if the Defendants did not want to sign then it is a good thing that they did not sign.
11. Mr Fa said that as the Plaintiff put pressure on his legal firm all these documents were drafted in haste. He drafted the Statement of Claim for breach of contract, the unsigned SPA (emphasis mine). Although he had searched he could not locate any invoices.

12. In re-examination Mr Fa said the Plaintiff was insistent that the documents be done as quickly as possible. There was a lot of urgency that these documents be done.
13. The final witness was Pranil Ravnit Prakash (PW3). He said the Plaintiff asked him to do a survey of the land belonging to the Defendant.
14. Under cross-examination he said he is not a registered surveyor. He had told the Plaintiff this, but he still said (PW3) do the job. He did not tell the Plaintiff it was not proper for him to do the job and that he should not have charged him fees as he was not a qualified surveyor.
15. With that the Plaintiff closed his case and the Defendants opened theirs.
16. The Defendants' first witness was the Second Defendant (DW1). He said the Plaintiff inquired about the vacant land but he informed the Plaintiff it was not for sale. The Plaintiff did the survey all by himself. The Plaintiff insisted the Defendants see a Commissioner for Oaths for signing the agreement the next day. The Commissioner said he was not qualified to be a witness. DW1 told the Plaintiff he would not sell the land.
17. Under cross-examination DW1 said the Plaintiff wanted to buy but he did not want to sell. He gave the surveyor consent to survey the land. Even if the Commissioner was qualified he would not have signed. The Plaintiff never offered the bank draft to him.
18. The next witness was Avneel Chand (DW2), the Principal Legal Officer in the Legal Practitioners Unit. He confirmed that Mr Fa had no practicing



certificate from 1 March to 17 May 2016, had no licence for that period, was not entitled to practise during that period and was not entitled to charge fees unless it was for work done prior to that period.

19. With that the Defendants closed their case, and Counsel began their oral submissions. Counsel for the Plaintiff said his claim was for general and special damages arising from misrepresentation. The misrepresentation was that the Defendants would sell the property. The Defendant denied he would sell but gave no reason why he consented to a survey. Counsel said he relied on the unsigned (emphasis mine) agreement as evidence that the Plaintiff relied on a misrepresentation made by the Second Defendant. Counsel said the agreement was not submitted as a binding agreement.
20. The draft unsigned agreements support the Plaintiff's claim that a representation to sell was made to him. Counsel concluded that special damages and also general damages for loss of business investment should be allowed.
21. Counsel for the Defendants then submitted. He said the Plaintiff was relying on verbal agreements which the Defendants deny. The draft SPA remained unexecuted. The Plaintiff's claims should fail because :
  - (1) There was no contract under s.59(d) of the Indemnity Guarantee and Bailment Act (IGB) which the Plaintiff can now enforce.
  - (2) The Plaintiff had not provided credible and sufficient evidence to prove his losses.
22. Counsel for the Plaintiff in his reply said the authorities do not apply as the Plaintiff claims damages for misrepresentation.



23. At the conclusion of arguments I said I would take time for consideration. Having done so I now deliver my decision.
24. The issues for decision by the Court have been lucidly and succinctly stated in paras 16 and 17 of the Issues for determination which paraphrased, read respectively as Did the Defendants' "breach of Agreement" cause the Plaintiff losses and Did the Plaintiff "rely on the Sale and Purchase Agreement and the agreed conditions for sale with the Defendant."
25. Thus it is as plain as a pikestaff that the basis for and the foundation of all the Plaintiff's claims is a Sale and Purchase Agreement.
26. So, I turn now to s.59(d) IGB Act, the applicable part of which is appended below:  
"59. No action shall be brought –  
(d) upon any contract or sale of lands.....  
unless the agreement upon which such action is to be brought or some memorandum or note thereof is in writing and signed by the party to be charged therewith....."
27. I am fortified in the conclusion I am reaching by the decision of the Court of Appeal in Latchman Bala ....Appellant AND Wasu Dewan....Respondent [1998] FJCA 54 Civil Appeal No. ABU 0007 of 1998S (27 November 1998). The Court of Appeal dismissed an appeal against a decision of Lyons J, who, although he "found there was an oral agreement between the parties for the sale and purchase of the house....." had dismissed the claim, because the agreement for the sale and purchase of the house which was in writing and signed by the appellant was not signed by the respondent.

28. Here the Plaintiff and his witness testified there was no signed SPA. Thus it must follow as the night the day that this action must fail and I shall therefore enter judgment for the Defendants.
29. For the sake of completeness I shall assess the damages to be awarded if the Plaintiff had succeeded in this action which he has not.
30. It is trite that the Plaintiff must specifically plead and prove his claims for special damages. In my considered opinion he has singularly failed to do so, and no useful purpose will be served if I were to repeat them here. Suffice it to say the evidence speaks for itself that no documentary proof were provided to the Court.
31. As for the general damages for loss of business opportunity, this stems from an alleged agreement which was not signed by the Defendants and of which alleged loss not an iota of written evidence was provided.
32. Finally, and in any event, and on the totality of the evidence led in Court, I find and I so hold that there was no misrepresentation by the Defendants.
33. In the result I make the following orders:
  - (1) The Plaintiff's claims are dismissed.
  - (2) The Plaintiff is to pay the First and Second Defendants costs summarily assessed at \$1,500.

Delivered at Suva this 6<sup>th</sup> day of March 2018.



David Alfred  
JUDGE  
High Court of Fiji