

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

Civil Action No.: HBC 295 of 2014

**BETWEEN** : **ADI VIKA NAITONI** of Lot 12 Korotogo Sigatoka in Fiji Trading as  
"Friendly Taxis and Tours Services" and Registered under the  
Registration of Business Names Act Cap 249.

**PLAINTIFF**

**AND:** **PACIFIC BEACH INVESTMENTS LIMITED** Registered as a limited  
liability company under the Companies Act Cap 247 having its registered  
office at the BDO Zarin Ali Level 8 Dominion House, Suva in Fiji and  
trading as the "Fringing Reef"

**DEFENDANT**

**Counsel** : **Plaintiff: In Person**  
**Defendant: Ms Prem Narayan**

**Date of Hearing** : **04.02.20**

**Date of Judgment** : **20.02.20**

**JUDGMENT**

**INTRODUCTION**

1. Plaintiff filed this action seeking specific performance of a purported lease agreement (the Agreement) entered with Defendant. The Agreement was to lease a business situated on a Crown Lease. The said agreement was entered without the consent of the Director of Lands who is the lessor of Crown Lease No 357644. It is imperative to obtain consent of the lessor prior to 'transfer, sublet, assign, mortgage, or part with the possession of the demised land or any part thereof without consent of the lessor first had obtained.' Leased business was a restaurant and in the evidence it was admitted that Plaintiff's daughter and her husband lived in the said premises. From the Agreement Defendant leased the bar and restaurant situated on Crown Lease No 357644 'with all

fittings, fixtures and effects, Plant and Equipment on the business premises for a term of 5 years.' This is violation of condition, contained in the Crown Lease 35766. This lease was issued in terms of State Lands Act 1945 and it is a 'Protected Lease' in terms of the said Act. Section 13 of State Lands Act 1945

## FACTS

2. The Defendant is the registered proprietor of the property in Crown Lease No 357644.
3. The Plaintiff and the Defendant entered the Agreement dated 15 September 2012.
4. Clause of the Agreement states:  
  
-“ The Lessor hereby agrees to lease and the Lessee hereby agrees to take on lease the said Business with all Fittings, Fixtures and Effects , Plant and Equipment on the business premises for a term of 5 years from the 1<sup>st</sup> day of August 2012 on terms and conditions hereinafter provided”
5. The Plaintiff was dealing directly with the then Director of the Defendant being Yajpal Singh who died in September 2013.
6. The Plaintiff was making payment through her daughter directly into the Defendant's loan account with Fiji Development Bank (FDB).
7. On 22 October 2013, a letter was written by the defendant's solicitors to the plaintiff stating that the property in issue belonged to the Defendant and not the late Yajpal Singh.
8. On 24 July 2014, a request by letter was made by the defendant seeking details relating to the lease agreement. The Plaintiff said that the letter was received by her husband.
9. On September 12 2014, a distress for rent was lived claiming the rent from 13 February 2014 to 13 September 2014.
10. Much of the evidence is not disputed. Plaintiff and Defendants are relying on the Agreement dated 13.9.2012. Before dealing with evidence it is needed to consider legality of the Agreement.
11. Section 13 of State Lands Act 1945 states:

*“Protected leases*

*13.-(1) Whenever in any lease under this Act there has been inserted the following clause:-*

*"This lease is a protected lease under the provisions of the State<sup>1</sup> Lands Act"*

*(hereinafter called a protected lease) it shall not be lawful for the lessee thereof to alienate or deal with the land comprised in the lease of any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever, nor to mortgage, charge or pledge the same, without the written consent of the Director of Lands first had and obtained, nor, except at the suit or with the written consent of the Director of Lands, shall any such lease be dealt with by any court of law or under the process of any court of law, nor, without such consent as aforesaid, shall the Registrar of Titles register any caveat affecting such lease.*

*Any sale, transfer, sublease, assignment, mortgage or other alienation or dealing effected without such consent shall be null and void.*

*(2) On the death of the lessee of any protected lease his executors or administrators may, subject to the consent of the Director of Lands as above provided, assign such lease.*

*(3) Any lessee aggrieved by the refusal of the Director of Lands to give any consent required by this section may appeal to the Minister within fourteen days after being notified of such refusal. Every such appeal shall be in writing and shall be lodged with the Director of Lands.*

*(4) Any consent required by this section may be given in writing by any officer or officers, either solely or jointly, authorised in that behalf by the Director of Lands by notice published in the Gazette. The provisions of subsection (3) shall apply to the refusal of any such officer or officers to give any such consent.*

*(Inserted by 21 of 1959, s. 2)*

*(5) For the purposes of this section "lease" includes a sublease and "lessee" includes a sub-lessee."*

12. The Agreement had allowed Plaintiff to lease a business premises where there was a restaurant and a bar. This agreement had sub-leased part of the premises covered under Crown Lease and had in fact granted possession of entire premises of the Crown Lease.
13. Clause 14 of the Agreement specifically referred to Plaintiff as 'Tenant' and speaks of 'Tenancy'. This clause allowed landlord to 're-enter' the premises. It is clear indication that irrespective of classification the Agreement, by the parties, it was a sub-lease of premises including the business on Crown Lease 357644. This was a subletting of the said premises along with restaurant and bar operated on it which is expressly prohibited by law in Section 13 of State Lands Act 1945, without consent of Director of Lands.

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<sup>1</sup> Earlier Crown Lands Act

14. So, both parties cannot seek relief under the Agreement which is unlawful in terms of Section 13 of State Lands Act 1945.
15. Even if I am wrong on above Plaintiff gave evidence and her daughter and the husband all gave evidence without assistance of a counsel. Their position was they complied all the provisions in the Agreement and their eviction from the premises was unlawful.
16. Plaintiff's daughter admitted in her evidence that they were in arrears of rentals and could not establish they had paid fully in terms of the Agreement when they were evicted. Her position was that they paid money to late Yajpal Singh, who was only a Director of Defendant.
17. Payments of the Plaintiff to the Defendant's account were presented to the court and those payments were accepted by the Defendant. All the payments contained in D8 were accepted as payments made by Plaintiff, but this shows that Plaintiff had not paid to Defendant's loan account a sum of \$3000 per month, for the entire period that they stayed till evicted.
18. Since the agreement was entered in 2012 and the period of lease was only for five years no specific performance can be ordered now. There is no evidence on balance of probability that Plaintiff was not in arrears of rent when she was evicted.
19. Plaintiff's position was that they had paid money to a Director who is now deceased. I accept that some amount would have been paid but what is the correct amount is not clear. If the Plaintiffs were in arrears of rent they could have evicted before death of late Yajpal Singh. But after his death Plaintiffs could not have paid to another person other than Defendant's account.
20. Late Janen Singh died in September, 2013 and from October, 2013 to April, 2014 Plaintiff had paid \$17,910.00 this is approximately the sum due for six month period. So there was no arrears of rent for said period. They had defaulted after that. From April 2014 to August only a payment of \$8,000 received.
21. Plaintiff and her daughter in the evidence said that they had operated business from the premises. They operated restaurant and bar at the premises even before execution of the Agreement on 13.9.2012. Plaintiff in her evidence said that late Singh did not mention that he was married hence he had stayed with her family at Sigatoka. Plaintiff's daughter and her husband lived on the premises at Crown Lease.

22. On the available evidence it is not proved that Plaintiff had paid all rentals prior to the death of late Janen Singh. After his death Plaintiff was paying rentals without default, only till April 2014.
23. In the evidence neither Plaintiff nor other witnesses said what were the movable items that were detained by distress. Without that evidence no order can be made relating to the alleged goods that were detained in distress and or any inventory of the items that were in the premises.
24. Plaintiff in the evidence said that they were operating the premises with furniture and fitting that existed as it was operational at the time they started operating. So without evidence regarding Plaintiff's items no order can be made in that regard.
25. There was arrears of rent after death of late Janen Singh according to Defendant's loan account. He had lived with Plaintiffs and had also involved with the business, so it is not clear whether there was an arrears of rent. Plaintiff's contention was money was given to him other than payments to Defendant's loan account with FDB.
26. In the circumstances there was no proof of exact amount of arrears of rents. Plaintiffs said that their books of accounts were also in the premises when they were asked to leave. In the circumstances on the balance of probability there is no proof of amount of arrears of rent. Plaintiff said that they paid money to deceased and records were kept in the premises. One cannot conclude as to arrears of rent only from loan account of Defendant.
27. So, Defendant had not proved counter claim on the balance of probability. So both claim and counterclaim are struck out. Considering the circumstances of the case no cost awarded.

## **CONCLUSION**

28. The Agreement for lease entered on 13.9.2012 was unlawful as no consent of the Director of Lands was obtained in terms of Section 13 of State Lands Act 1945 as it was Protected Lease. So this claim and counterclaim which are bases solely on the said unlawful agreement needs to be struck out. Even if I am wrong on that Plaintiff had failed to prove their claim and Defendant had also failed to prove their counter claim on balance of probability. Considering circumstances of the case I do not award any costs.

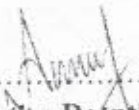
## **FINAL ORDERS**

- a. Plaintiff's claim is dismissed and struck out.

- b. Defendant's counter claim is dismissed and struck out.
- c. No costs.

Dated at Suva this 20<sup>th</sup> day of February, 2020.



  
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Justice Deepthi Amaratunga  
High Court, Suva