

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION AT LAUTOKA**  
**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 4 OF 2020**

**BETWEEN** : **ALVIN RAJ** of Bechu Prasad Road and Baswa Nand Maharaj Road,  
Field 40 New Subdivision, Lautoka, Businessman.

**PLAINTIFF**

**AND** : **PRATEEP KUMAR** also known as **PARDEEP KUMAR** and  
**HARUNITRA KUMARI** husband and wife, both of Field 40, Lautoka.

**DEFENDANTS**

**Appearances** : Mr S. Nand for the plaintiff  
Mr R. P. Chaudhary for the defendants

**Date of Hearing** : 03 March 2020

**Date of Judgment** : 10 March 2020

## **J U D G M E N T**

[01] The plaintiff initiated this action by way of originating summons and claims against the defendant the following orders:

1. *An order that the penalties imposed by the Housing Authority on Lease Number 591687 be paid by the defendant/vendor.*
2. *Costs of this application to be paid by the defendant on a solicitor/client basis.*
3. *Such further or other relief as this Honourable Court may deem just.*

[02] The grounds for seeking the above orders are stated in the supporting affidavit of the plaintiff:

- a) *That on 29 November 2018, I entered into terms of settlement with the defendants.*
- b) *That on 11 December 2018, an order by consent reflecting the terms of settlement was registered by the High Court of Fiji.*

- c) *That the defendant agreed to sell and execute the transfer to me their Housing Lease No. 591687 for a sum of \$67,000.00.*
- d) *That the Housing Authority imposed a penalty on the defendants for selling undeveloped land over Lease No. 591687.*
- e) *That it is the defendant's responsibility to settle the penalty with the Housing Authority as the same has no bearing on my subsequent development.*

[03] The defendants filed their affidavit of Prateep Kumar in response stating:

- a) *The settlement reached between us and Alvin Raj related to Civil action number 143 of 2018 and also civil action number 29 of 2010.*
- b) *That I executed all the required documents (transfer, consent application) as per the Terms of Settlement. The same were executed by me on 29 November 2018 and also on behalf of my wife as per Power of Attorney number 57589 dated 12 April 2016, given to me by my wife.*
- c) *That on 22 January 2020, my solicitors Messrs Chaudhary and Associates wrote to the Housing Authority.*
- d) *That the Housing Authority replied by their letter dated 27 January 2020 and all the illegal development on my property referred to in the said letter was carried out by the plaintiff Alvin Raj.*
- e) *The plaintiff has carried out major illegal developments on my property despite being ordered by the Lautoka City Council and the High Court to stop his illegal developments.*
- f) *That despite all the notices the plaintiff continued with his illegal development. The Lautoka City Council issued Court Proceedings against the plaintiff and obtained an order in Civil action number 29 of 2010.*
- g) *That despite the Court order the plaintiff (Alvin Raj) continued with the illegal construction. On application by the Lautoka City Council the plaintiff (Alvin Raj) was found guilty of contempt of court. The plaintiff (Alvin Raj) appealed the decision of the High Court. The Fiji Court of Appeal dismissed the appeal on 10 March 2011.*
- h) *The plaintiff hires out the Hall constructed on my property for weddings etc. and makes money. He has a permanent "welcome" sign on the gate. The hall is known as Alvin Raj's Hall".*
- i) *That I was not able to build anything on my property because of the illegal construction started by Alvin Raj on my property which began sometime in 2008.*
- j) *That I was not able to develop my property or build anything on it because of the illegal building constructed on it by Alvin Raj without my consent or approval and without the consent and approval of the Lautoka City Council.*

*k) That in view of Alvin Raj's action it is only fair, just and proper that he pays the penalty imposed by the Housing Authority. In the alternative he should demolish the illegal structure and give me vacant possession of my property as it was before he started the illegal works. I am still prepared to build on my property a legal structure with full approval of the authorities and not an illegal structure that Alvin Raj has built.*

[04] The issue in this case is that who is to pay the penalties imposed by the Housing Authority on lease number 591687.

[05] The parties entered into a sale and purchase agreement (the 'agreement') whereby the defendants, Prateep Kumar and Harunitra Kumari agreed to sell and execute and transfer their property/land over Housing Lease No. 591687 to the plaintiff, Alvin Raj for a sum of \$67,000.00.

[06] Disputes arose between the parties over the agreement and Alvin Raj brought action (HBC 143 of 2018) in the High Court against Prateep Kumar and Harunitra Kumari. That action was settled on 29 November 2018, and judgment by consent was entered in the following terms:

- 1. It has been agreed between the plaintiff and the defendants that the plaintiff will purchase the defendants' Housing Authority Lease No. 591687 for the sum of \$67,000.00.*
- 2. The first named defendant states and declares that he has full authority from the second named defendant, Harunitra Kumari to reach settlement in this matter for the above sum.*
- 3. That upon the sale of the property being Housing Authority Lease No. 591687 and the payment of the purchase price being \$67,000.00, the defendants' will have no further claims against the plaintiff and vice versa.*
- 4. That each party to bear their own costs.*
- 5. The related matter being Civil Action No. 29 of 2010 is also settled as between the parties herein (being defendants except second named defendant and Alvin Raj being the third party) for the sum of \$67,000.00.*

6. *It will be the responsibility of the plaintiff, Alvin Raj to apply for and obtain Consent to transfer the above lease to his name and to regularize any breaches committed by him, the defendants agree to execute all the necessary documents for the transfer of the said Housing Authority Lease and each party to bear their won [sic] cost of transfer.*
7. *The transfer to be done within 3 months from date hereof or any further time agreed in writing by the parties.*
8. *In the conveyancing matter, the plaintiff will engage Fazilat Shah Legal and the defendants' will engage Messrs Chaudhary & Associates.*
9. *Each party to withdraw their respective claims.*

[07] The property covered under the consent judgment is on a Housing Authority Lease. The plaintiff applied for consent of the Housing Authority to transfer the property to the plaintiff in accordance with the judgment. The Housing Authority granted a conditional consent. By its letter dated 2 January 2019, it informed the plaintiff's solicitor (Fazilat Shah Legal) that:

*"...*

*Dear Sir*

***Re: PENALTY FEE – TRANSFER 591687 LOT 007 DP 9140 FIELD 40 FROM PRATEEP KUMAR aka PARDEEP KUMAR & HARUNITRA KUMARI TO ALVIN RAJ***

*We refer to your clients' application in the matter above.*

*The Authority notes that upon inspection that the subject property has a lean to on site without proper plans only therefore your clients namely, PRATEEP KUMAR aka PARDEEP KUMAR & HARUNITRA KUMARI are in breach of the their lease conditions pursuant to Clause 5 whereby they failed to construct a proper residential dwelling in accordance to respective Building Act and rules within two (2) years from commencement of the lease i.e. 24<sup>th</sup> March, 2006.*

*We advise that in consideration of the above breach, our consent to the subject dealing is granted subject to following conditions:*

- i) *That the present lessees, namely PRATEEP KUMAR aka PARDEEP KUMAR & HARUNITRA KUMARI, are to pay a penalty fee of \$6,700.00 for failing to comply with Clause 5 of the lease conditions.*
- ii) *The proposed transferee, ALVIN RAJ, to provide an undertaking that he would fully comply with Clause 5 of the lease conditions within two (2) years from date of registration of Transfer to him.*

*The necessary consent will be endorsed on the relevant transfer dealing upon compliance of the above two (2) conditions.*

*..."*

[08] Upon receiving the conditional condition, the plaintiff's solicitor wrote to the defendants' solicitor (Chaudhary & Associates) and asked them to pay the penalties imposed by the Housing Authority. To which, the defendants' solicitor replied by their letter dated 16 January 2019 that:

*"...*

*Dear Sir/Madam*

***RE: TRANSFER OF HOUSING AUTHORITY LEASE NUMBER 591687 FROM PRATEEP KUMAR AND HARUNITRA KUMAR TO ALVIN RAJ PURSUANT TO COURT ORDER DATED 11<sup>TH</sup> DECEMBER 2018 IN HIGH COURT CIVIL ACTION NUMBER 143 OF 2018***

- i) *We refer to your letter dated 15<sup>th</sup> January 2019 and the copy of letter dated 2<sup>nd</sup> January 2019 from the Housing Authority. As you are no doubt aware the illegal development on the lease was carried out by our client Alvin Raj and not our clients, the transferor. In fact that is what the two High Court cases were about – Civil action number 029 of 2010 and Civil Action number 143 of 2018.*
- ii) *We also refer you to paragraph 6 of the Court order dated 11<sup>th</sup> December 2018. It is the duty of Alvin Raj to "regularize any breaches committed by him". If he is not able to regularize prior to sale, he should pay the penalty for the breaches committed by him. Our clients did not place a single brick on the land.*
- iii) *The illegal development by your client is in fact prevented out clients from carrying out any legal development on the property.*

*In the circumstances it is only fair and just that the Housing Authority penalty be paid by our client Alvin Raj. He is responsible for the illegal development on the property. Our clients will not pay the penalty under any circumstances.*

...”

[09] The plaintiff was adamant and insisted that the defendants should pay the penalties as they are the owners of the property.

[10] Thereafter, the defendants’ solicitor by their letter dated 22 January 2020 sought a clarification from the Housing Authority about the penalties and the lean to on site. The Housing Authority then responded by its letter of 27 January 2020 that:

“... ”

*Dear Sir,*

**RE: CONSENT TRANSFER – 591687 DP9140 LOT 007 FIELD 40**

**BREACH OF ILLEGAL CONCRETE STRUCTURE**

*We refer to your letter dated 22<sup>nd</sup> January, 2020 in regards to the matter above.*

*The Authority apologies for its letter dated 02/12/2019 in stating that the subject property has a lean to on site, actually there is an illegal concrete structure which is in breach of the lease conditions.*

*The said illegal structure is being built without any approved building plan and the structure is being built on the boundary line between Lot 006 and Lot 007 on DP 9140. They even exceeded the Building Line Restrictions, from the front, the sides and the rear. Please note that this is a residential lot and not a commercial lot.*

...”

[11] It will be noted that the High Court of Lautoka issued an injunction against Alvin Raj (the plaintiff in this case) in an action brought by Lautoka City Council (HBC No. 29/2010). He was one of the defendants, along with Prateep Kumar and Harunitra Kumari (the defendants in this case) in that case. The current defendants were cited as defendants in HBC No. 29/2010 because they are the proprietors of the property. Subsequently, in the same case, Alvin Raj was found guilty of contempt of the injunction issued against him and was sentenced. In its

finding the court said Mr Alvin Raj was guilty of contempt of court for having constructed an internal partition wall in constructing a shed over Lot 7, 8 and 9 on deposit plan 9140, being the Housing Authority sublease. He unsuccessfully appealed the conviction and sentence to the Court of Appeal.

- [12] On the evidence, I find that it is the plaintiff who built the illegal structure on the property exceeding the Building Line Restrictions from the front, the sides and the rear. I also find that the plaintiff had built a Wedding Hall for commercial purpose on the residential lot.
- [13] The plaintiff had come into the occupation of the property after the agreement and had built the illegal concrete structure. There is no evidence that the defendants had built the illegal structure.
- [14] At the hearing, the plaintiff was unable to deny or rebut the fact that he built the illegal structure on the property after he came into possession of it. Instead, he admitted that he built the structure complained of. Moreover, the consent judgment itself states that it is the responsibility of the plaintiff, Alvin Raj to regularize any breaches committed by him. Obviously, the plaintiff had built the illegal structure that was the reason he was convicted in the contempt proceedings brought against him.
- [15] The Housing Authority had imposed penalties for the illegal structure which is breach of the lease.
- [16] The defendants' affidavit in opposition remains unchallenged given the fact that the plaintiff did not file any affidavit in reply.
- [17] Having reading the affidavit evidence filed by the parties, having heard the submissions put forward by both counsel and having considered the admission made by the plaintiff that he built the concrete structure which the subject of the penalty, I find it just and reasonable to order the plaintiff to pay the penalty fee of \$6,700.00 imposed by the Housing Authority. I would make no order as to costs.

**The result**

1. The plaintiff shall pay the penalty fee of \$6,700.00 imposed by the Housing Authority.
2. There shall be no order as to costs.

*M.H. Mohamed Ajmeer*

*10/3/20*

.....  
**M.H. Mohamed Ajmeer**

**JUDGE**

**At Lautoka  
10 March 2020**

Solicitors:

Fazilat Shah Legal, Barristers & Solicitors for the plaintiff  
Chaudhary & Associates, Solicitors for the defendants

