

IN THE HIGH COURT OF FIJI AT LABASA
CIVIL JURISDICTION

Civil Action No. HBC 54 of 2018

BETWEEN

DOANAR INVESTMENT LIMITED a limited liability company incorporated
under the Companies Act of Nasekula Road, Labasa.

PLAINTIFF

AND

FIJI NATIONAL UNIVERSITY a statutory body having its head office at
Samabula, Suva.

DEFENDANT

Counsel : Mr. H. Robinson with Ms. A. Sumer for the Plaintiff
Ms. M. Rakai with Mr. B. Singh for the Defendant

Date of Hearing : 17th September 2020

Date of Judgment : 16th October 2020

JUDGMENT

[1] The plaintiff instituted these proceedings by way of writ of summons against the defendant seeking the following orders:

- (a) Special damages in the sum of \$70,165.79.
- (b) General damages.
- (c) Aggravated damages.
- (d) Pecuniary damages.
- (e) Interest pursuant to section 3 of the Law Reforms (Miscellaneous Provisions)(Death and Interest) Act or the commercial bank lending rate.
- (f) Costs on solicitor/client basis.
- (g) Such further or other relief as to this court may deem just and expedient.

[2] The plaintiff's case is that the defendant entered into an agreement of tenancy with the plaintiff on 04th January 2011 for a period of three years commencing from 18th November 2010 in respect of the buildings and improvements erected on the land comprised in the Crown Lease No. 4343 (the premises).

[3] The particulars of breach as alleged by the plaintiff are as follows:

- (a) Pursuant to clause 15(n) of the agreement prior to defendant's occupation the defendant was to paint the exterior and interior of the said building which the defendant failed to do.
- (b) The defendant wrongfully terminated the said agreement and vacated when the agreement did not provide an early termination clause.
- (c) Further, again pursuant to clause 15(n), the defendant failed to paint the building upon vacation.
- (d) Further, the defendant did not reinstate the building to its original condition.

[4] The particulars of special damages sought by the plaintiff are as follows:

Loss of rental for 10 months	\$24,201.67
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Less deposited appropriated towards unpaid rental	<u>\$ 5,000.00</u>
	\$19,207.67
Cost of painting the premises prior to occupation	\$14,979.06
Cost of painting the premises upon vacation	\$14,979.06
Cost of restoration of premises to its original condition	\$15,000.00
Cost of improvements to property made at the defendant's request	\$ 6000.00

[5] The plaintiff alleged that the defendant vacated the premises and left the keys at the office of Messrs. Gibson & Company, Labasa for no cause whatsoever. The defendant in its statement of defence has denied the allegation against it and put the plaintiff to strict proof of the same.

[6] At the pre-trial conference the parties admitted the following facts:

1. The defendant entered into a tenancy agreement ("Agreement") with plaintiff on the 4th day of January, 2011 for a period of three (3) years commencing on the 18th day of November, 2010 over the whole of the buildings and improvements erected on the land comprised in the Crown Lease No. 4343 ("the premises").
2. The defendant agreed to pay rent for the premises as follows:
 - i) \$866.67 plus VAT @ 12.5% being \$975.00 for November, 2010;
 - ii) \$2000.00 plus VAT @ 12.5% being \$2250.00 for December, 2010;
 - iii) \$2000.00 plus VAT @ 15% being \$2300.00 till 31st October, 2012;
 - iv) \$2200.00 plus VAT @ 15% being \$2530.00 thereafter.
3. With the approval of the plaintiff the defendant carried out alterations to adapt the premises to its use pursuant to clause 4 of the Agreement.
4. The defendant obtained the quote of \$14979.06 from Jaduram Industries Limited for costs of painting the whole building.
5. The defendant did not paint the exterior and interior of the said building prior to the defendant's occupation.

6. The defendant did not paint the exterior and interior of the said building after vacation.
7. Notice to vacate was given to the plaintiff on 31st December 2012 effective from 31st January 2013.
8. The defendant vacated the said premises on 31st January 2013. No early termination clause existed in the agreement.
9. From 31st January 2013 to 17th November 2013 the defendant did not pay any rent to the plaintiff.
10. The plaintiff demurred against the early termination of the tenancy by the defendant for no cause whatsoever.
11. Despite the protests by the plaintiff the defendant insisted on vacating, vacated the same and left the keys to the premises at the office of Messrs. Gibson & Company, Labasa.

[7] The main issue to be determined here is whether the defendant breached the Agreement by vacating the premises before the expiry of the period of tenancy which is three years.

[8] In determining the above issue the court must consider the entire agreement to ascertain the intention of the parties. There is no clause in the Agreement, specifically providing that the defendant is entitled to vacate the premises prior to the expiration of the period of tenancy which is three years.

[9] The defendant submits that although there is no clause to terminate the tenancy it has given notice it has given notice under section 89(2) of the Property Law Act 1971. Section 89(2) of the Property Law Act 1971 provides:

In the absence of express agreement between the parties, a tenancy of no fixed duration in respect of which the rent is payable weekly, monthly, yearly or for any other recurring period may be terminated by either party giving to the other written notice as follows:-

- (a) where the rent is payable yearly or for any recurring period exceeding one year, at least six months' notice expiring at the end of any year of the tenancy; or

(b) where the rent is payable for any recurring period of less than one year, notice for at least a period equal to one rent period under the tenancy and expiring at any time, whether at the end of a rent period or not.

[10] Section 89(2) deals with tenancy agreements without a fixed duration. In this matter the tenancy agreement between the parties is for three years. Therefore, the provisions of section 89(2) cannot be relied on by the defendant.

[11] I will now consider the relevant clauses of the agreement.

[12] Clauses 9 and 15(n) of the agreement provide as follows:

(9) Should the Tenant desire to have the lease extended and/or renewed for a further term, the Tenant shall exercise such renewal option, if at all; by giving written notice to Landlord not less than ninety (90) days prior to the expiration of the initial Term. The renewal term shall be at the rental rate as agreed between the parties and otherwise upon the same covenants, conditions and provisions as provided in this lease.

(15) The tenant shall paint the exterior and interior of the said premises in its own colours on or before the commencement of this tenancy. The tenant shall continue to paint the said premises once every three (3) years during the tenant's occupation and upon vacation by the Tenant. **The Tenant at the expiration or sooner determination of its lease** remove at its own expense all lettering and other distinctive marks or signs put by it on any of the doors or other parts of the building and make good any damage or disfigurement caused to any such door or other part by reason of such removal. The Tenant shall further paint the building in its original colours before vacating the premises and handing over possession. (Emphasis is mine).

[13] Sooner determination of its lease means the tenant was at liberty to vacate the premises before the expiration of the period of three years and therefore, the plaintiff is not entitled to claim the rent for the balance period.

[14] Clause 4 of the agreement provides:

The Tenant may prior to the commencement of the said term, and from time to time during the said term, and at its discretion but with the prior written consent of the Landlord make erect or install alterations additions decorations improvements fixtures fittings and appliance within the demised premises for the purpose of its business, provided that such alterations additions decorations improvements fixtures fittings and appliances do not lesson the structural strength of the building and provided further that at the expiry of the tenancy and the tenant shall (unless otherwise agreed by the Land lord in writing) reinstate at their own costs the demised premises to its ORIGINAL state and conditions as it was at the commencement of the Tenancy at their own expense.

[15] The defendant has obtained the quotation (P10) from Jaduram Industries. Witness Shalendra Jaduram testified at the trial for the plaintiff and said he is a contractor for the last 38 years and at the request of Mr. Ram who was a long standing friend of his, he went to the property, took measurements and gave the quotation. He also said in cross-examination is not valid now because with the elapse of time the prices generally go up. There are two quotations given by Jaduram Industries. One is dated 04th November 2010 (P10) and the other is dated 18th April 2018 (P3). The quotation "p10" is for \$14,970.06 and the other is for \$15,000.00. The defendant vacated the premises on 31st January 2013 and the quotation "P3" has been obtained more than five years after the defendant vacated the premises. The witness for the plaintiff testified that the plaintiff does not have receipts or invoices and they have all being misplaced.

[16] The plaintiff claims \$14,979.06 as cost of painting the premises prior to occupation. This claim being special damages the plaintiff must adduce evidence to establish that it in fact spent this amount to pain the building. The only evidence available to this court is the document titled "PARTICULARS OF RECEIPTS" (P4) and some cheque buts (P2). There is no evidence of the nature of the work the plaintiff did prior to occupation. The plaintiff's claim is only for painting but from "P4" it appears that certain payments are for purchasing timber and building material, carpentry work, hurricane shutters and for plumbing work. As per "P4" the amount incurred by the plaintiff is \$6534.38 and the total amount shown in cheque buts is \$7350.40. Some of the entries found in

cheque but is also included in "P4". There was no requirement for the plaintiff to paint the building prior to the occupation. As per clause 15(n) of the Agreement it was the responsibility of the defendant to paint the building prior to its occupation.

[17] The plaintiff also claims \$6000.00 for the improvements made at the request of the defendant. However, there is no evidence as to the nature of the improvement and details of the work done on the property. The plaintiff has failed to tender any evidence to show that it in fact spent the amounts of money claimed in the statement of claim.

[18] The plaintiff also claimed \$14,979.06 as cost of painting the premises upon vacation and \$15,000.00 as cost of restoration of the premises to its original condition. However, there is no evidence whatsoever, to show that the plaintiff spent this amount of money to for painting and to restore the building to its original condition. The court needs evidence to ascertain whether the plaintiff spent the amount claimed to make orders sought against the defendant. A bare statement that a particular amount of money was spent for the repairs and painting is absolutely insufficient for the court to decide on the quantum of damages.

[19] For the reasons aforementioned the court makes the following orders.

ORDERS

1. The statement of claim is struck out and plaintiff's claim is dismissed.
2. Parties to bear their own costs.



16th October 2020


Lyone Seneviratne

JUDGE