

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

**CIVIL JURISDICTION**

**Civil Action No. HBC 140 OF 2018**

**BETWEEN** : **KASABIAS PTE LIMITED** a limited liability company having its registered office at 75 Suva Street, Suva in Fiji.

**PLAINTIFF**

**AND** : **TRADE FURNITURE & JOINERY LIMITED** a limited liability company having its registered office Lot 1 Vunirewa Subdivision, Nadi Back Road, Nadi in Fiji.

**DEFENDANT**

**Appearance** : **Mr. Parnish Kumar for the plaintiff.**  
**No appearance for the defendant.**

**Ex- parte hearing** : **Tuesday, 13<sup>th</sup> October 2020 at 9.00 am.**

**Judgment** : **Friday, 22<sup>nd</sup> January 2021 at 9.00 am.**

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

(01) On 06<sup>th</sup> July 2018, the plaintiff filed a writ of summons with a statement of claim seeking a judgment in the sum of \$59,242.41 with interest and costs. The plaintiff's claim is founded on contract. The action concerns claim by the plaintiff that the defendant defaulted on its payment for the hardware and the building materials supplied by the plaintiff on credit.

(02) As noted above, on the 06-07-2018, the plaintiff filed the writ of Summons with statement of claim seeking judgment in the sum of \$59,242.41 with interest and costs. On 16-08-2018, the defendant through its solicitors filed a statement of defence. On 12-11-2018, the plaintiff filed its summons for directions and pre-trial conference minutes were filed on 20-01-2020. On 19-05-2020, the court fixed the case for trial on 13<sup>th</sup> to 15<sup>th</sup>

October, 2020. On 12-10-2020, the defendant's solicitors withdrew from the case after serving summons for withdrawal on the defendant. Therefore, the defendant was well aware that its solicitor withdrew. Despite this knowledge, the defendant was not represented by a solicitor and there was no appearance on behalf of the defendant when the matter came before me on 13-10-2020 for trial and there is nothing that the court can do for it. Counsel for the plaintiff after having waited for fifteen minutes, informed the court that they wish to proceed for trial. Why should the failure of someone paralyze the process of the court?

- (03) The Credit Controller of the plaintiff, Mr. Shaneel Chandra alone gave evidence. I need to go briefly to the evidence. In his evidence, he told the court that;
- (a) The defendant company entered into a Contract with the plaintiff for supply of hardware materials on credit terms. Copy of the Customer Credit Application Form is marked as PE1. Mr Chandra confirmed that it was Trade Furniture & Joinery Limited who made the application to the plaintiff and the signature is of the director of the defendant namely Govind Goundar.
  - (b) According to the witness, the credit facilities as agreed are on 15/30 days and default interest applies thereafter which is at a rate of 1.5% per month. The Certificate of incorporation is attached to PE1.
  - (c) The witness also stated that further to the Credit Application, the director of the defendant had executed a personal guarantee to the plaintiff on 18 October 2017 in the sum of \$100,000.00. The Guarantee was marked as PE2.
  - (d) The items were sold to the defendant on credit and the witness further explained the process undertaken to deliver the goods to the defendant. The documents would include purchase order or orders accepted through phone calls, invoicing and delivery note. Mr Chandra said that the statement of account which is marked as PE3 is correct and further confirmed that the invoices in the plaintiff's bundle of documents from PE 4 to PE 42 are true. **The total amount shown as per the statement of account is \$58 892.41.**
  - (e) Mr Chandra further informed the Court that since the defendant had neglected to pay the sum as claimed they gave the file to their solicitors who issued a demand notice. This demand notice was dated 11 April 2018 and the sum owed in the demand notice was \$58,892.41 plus cost of the notice as \$350.00. The demand notice is marked as PE43.
  - (f) After the demand notice was issued, the defendant sent an email dated 11 April 2018 to the plaintiff and attached its letter **where it admitted the claim and sought for further time to make payment.** The letter is marked as PE44a.

- (g) On or about May 2018 the plaintiffs solicitors made another follow up and the defendant acknowledged the debt and sought for further time. This email is marked as PE44b.
  - (h) A witness statement was also given by Mr Chandra dated 12 October 2020 and is marked as PE45.
  - (i) The witness further testified that the defendant has alleged in his statement of defence that the goods were not supplied to the defendant to which the witness stated that it is not true and should such arise, he should have raised it at the time when demand notice was issued or when he acknowledged the debt which is contrary to his suggestion.
  - (j) The plaintiff further claims legal costs of prosecuting this action and interest that continue to accrue.
- (04) There was no appearance for the defendant and in the absence of cross-examination; it is enticing to accept the unchallenged evidence of the plaintiff *in toto*.
- (05) In this case, the plaintiff says that the defendant had entered into a contract with the plaintiff for supply of hardware and building materials on credit (PE-1). The defendant had also executed a personal guarantee in the sum of \$100,000.00 in favour of the plaintiff (PE-2). The defendant started purchasing goods from the plaintiff from 03.10.2017. Based on the orders placed by the defendant, between 03.10.2017 to 06.12.2017 the plaintiff had supplied goods on credit to the defendant to a total amount of \$58,892.41 inclusive of interest. [Exhibit PE4 to PE42].
- (06) The plaintiff had made numerous reminders and demands to the defendant to pay the owed sum however the defendant had neglected to pay the same.
- (07) On 11.04.2018, the plaintiff through its solicitors issued a demand notice requiring the defendant to pay the sum of \$58,892.41. The defendant did not dispute the amount claimed but sought time to make the payment because it had suffered loss due to floods in the workshop site [Exhibit PE44A]. **It is obvious from PE44A that the sum was acknowledged by the defendant as owing.**
- (08) It is very clear to me from the correspondence marked PE44A, the defendant itself admitted the sum of \$49,913.77 for goods supplied, and a sum of \$8,978.64 as default interests. The defendant itself has admitted in the correspondence marked PE 44A, that the plaintiff has supplied goods worth of \$59,913.77. In its statement of defence, the defendant took up the position that it did not receive the goods. The defendant's

correspondence PE 44A effectively nullifies the position taken up in the statement of defence. The position taken up in the statement of defence is an abuse of process of court.

I hold that the plaintiff succeeds in its claim for the price of goods supplied on credit between 03.10.2017 to 06.12.2017.

### **ORDERS**

- (1) I enter Judgment for the plaintiff against the defendant in the sum of \$58,892.41 with simple interest at the rate of 1.5 per month from 11.04.2018 till the date of Judgment, i.e. 22.01.2021. The judgment sum and the interest are to be paid to the plaintiff by the defendant within 14 days from the date of this judgment.
- (02) I award costs to the plaintiff summarily assessed in the sum of \$1500.00 which is to be paid by the defendant within 14 days from the date of this judgment.

  
22/01/2021  
.....  
**Jude Nanayakkara**  
[Judge]



**High Court - Lautoka**  
**Friday, 22<sup>nd</sup> January 2021.**