

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

CIVIL ACTION NO. HBC 40 of 2022

BETWEEN : **HI-LITE ALUMINIUM JOINERY** a registered company having its registered office at 2 Evan Street, Lautoka.

PLAINTIFF

AND : **BA PROVINCIAL HOLDING COMPANY LIMITED** a Limited Liability company having its registered office at Level 2, Rogorogovuda House, P O Box 1360 Tavewa Avenue, Lautoka

DEFENDANT

BEFORE : A.M. Mohamed Mackie-J

APPEARANCE : Ms. Ravuikadavu, with Ms. D. Chand, for the Plaintiff.
: Defendant absent and unrepresented.

DATE OF HEARING : 01st June 2022

DATE OF DECISION : 29th July 2022

JUDGEMENT
(On Formal Proof)

A. INTRODUCTION:

1. This is an action commenced by the Plaintiff Company by filing its writ of summons on 10th February 2022, against the Defendant Company seeking reliefs, *inter-alia*:
 - i. Special Damages in a sum of \$ 50,583.20 being the consideration for the goods sold and delivered.
 - ii. General damages.
 - iii. Interest at 13% on post and pre judgment &
 - iv. Costs.
2. The writ of summons was, reportedly, served on the Defendant on 22nd February 2022, and there was no acknowledgment of service by or on behalf of the Defendant, despite 14 days had lapsed from the date of service.
3. Accordingly, the Plaintiff by Ex-parte Summons dated 26th April 2022 supported by the Affidavit of, SUBASHINI, (the Director) moved for the matter be taken up for formal proof hearing and same being allowed, at the hearing held before me on 01st June

2022, the said Director, SUBASHINI, gave evidence by marking exhibits from “PEX 1” to “PEX13 and closed the case.

B. BACKGROUND FACTS:

4. The Plaintiff is a registered Company at No-2, Evan Street, Lautoka, dealing in, among other things, Aluminum fittings and fixtures and the Defendant is a limited liability Company having its registered office at Level-2, Rogorogoivuda House, P.O.Box 1360, Taveva Avenue, Lautoka.
5. The Defendant, pursuant to the quotation given by the Plaintiff (PEX 3), placed a purchase Order for materials for a sum of \$198,000.00 and it was agreed between the Plaintiff and the Defendant that the goods will be supplied on phases and for each phase of goods the Defendant will make payments.
6. Accordingly, the Plaintiff between 17th January 2019 and 29th January 2019 sold and delivered goods worth of \$52,100.00 as per “PEX 4” in settlement of which cheque bearing No-668957 dated 31st January 2019 for a sum of \$48,483.20 and cheque bearing No668964 dated 15th February 2019 for a sum of \$2,100.00 “PEX-9” were given by the Defendant to the Plaintiff.
7. When the first cheque bearing No. 663957 dated 31st January 2019 was presented to the bank by the Plaintiff on due date, it was dishonored due to non-availability of funds in the account of the Defendant Company. The second cheque for \$2,100.00 was to be deposited on 15th January 2019.
8. Subsequent to the email communications between the Plaintiff and the Defendant as per “PEX 11” and the Defendant’s letter marked as “PEX 12”, by which, though the Defendant had admitted the liability hereof, had failed and neglected to settle the same. Hence, the Plaintiff resorted to this action.

C. ISSUES:

9. The main issues that require the consideration of this court in deciding the claim of the Plaintiff are as follows;
 - a. Was there an agreement between the Plaintiff and the Defendant for the sale and purchase of good as per the pleadings?
 - b. Were goods for a sum of \$ 50,583.00 sold and delivered by the Plaintiff unto the Defendant?
 - c. Was the first cheque for \$48,483.20 given by the Defendant unto the Plaintiff dishonored on same being presented for payment?
 - d. Has the said amount, along with the amount of the second cheque for \$2,100.00, become outstanding from the defendant?

- e. Has the Defendant made fraudulent misrepresentation and defaulted in settling the said outstanding amount?
- f. Whether the Plaintiff is entitled for any of the reliefs prayed for in the S.O.C?

D. THE EVIDENCE & ANALYSIS:

- 10. The Director of the Plaintiff Company, namely, SUBASHINI) has given oral evidence, by marking exhibits from “Pex-01 to “Pex 13”.
- 11. The Plaintiff commenced her evidence by marking the Certificate of Registration of the Company as “Pex-1” where presently she is said to be a Director and the Letters of Administration of the Estate of her late Husband issued by High Court Suva, as “Pex-2” in order to prove her present status in the Plaintiff Company and to file this action.
- 12. According to the Plaintiff, on 11th January 2019, a Quotation marked as Pex-3 being tendered, the Plaintiff Company has sold the goods (Aluminum Window frames. Door Stopper, built in frame for doors locks, bottom rails and everything for doors) unto the Defendant as per Exhibit “Pex-4”.
- 13. On the good being sold and delivered on 14th January 2019, 24th January 2019, 28th January 2019 and 29th January 2019 as per “Pex-5”, “Pex-6”, “Pex-7” and “Pex-8” respectively, unto the Defendant, two cheques dated 31st January 2019 and 15th February marked as “Pex-9” for a sum of \$ 48,483.20 and \$ 2,100.00 respectively being given to the Plaintiff and the cheques for \$ 48,483.20 being deposited as per “Pex-10” , it has been dishonored due to the lack of funds in the Defendant’s Account.
- 14. However, prior to the due date of the second cheque for \$2,100.00 i.e. 15th February 2019, the Defendant by its e- mail dated 14th February 2019 marked as “Pex-11” has requested the Plaintiff not to deposit the said two cheques and to hold them until the funds are arranged to the Account. The defendant has tendered an apology as well for the inconvenience caused, for which the PW-1’s husband Munisami, has by his even dated returner mail , also marked as “Pex-11”, has expressed his concern and displeasure.
- 15. In response to the aforesaid mail, the Defendant by e-mail dated 15th February 2019 and the letter dated 1st May 2020, marked as “Pex-12” has confirmed that the debt is in a sum of \$ 50,583.20 and undertaken to settle it not later than 1st October 2020.
- 16. P.W.01 Subashini, has given clear and un-contradicted evidence confirming the contents of the above documents, and this evidence has remained unchallenged. The Defendant Company seems to have decided to stay away from the Court and not to challenge the matter for obvious reason that they had intimated in these letters marked as Pex-11 “and Pex-12, contents of which can be taken as clear and unconditional acknowledgment of debt.

17. The fact that the plaintiff and the Defendant had entered into an Agreement for the sale of good by the Plaintiff unto the Defendant on such payment arrangement can be easily evinced from the contents of the above documents and the oral evidence of the PW-1.
18. I am satisfied that the Plaintiff has proved its case against the Defendant by its uncontradicted and unchallenged oral and documentary evidence unfolded before this Court. Accordingly, this Court decides to answer the issues raised in this matter affirmatively and to award the Plaintiff \$50,583.20 as prayed for in paragraph I to the prayer to the Statement of claim.
19. The Plaintiff claim damages for breach the Agreement and fraudulent misrepresentation that the defendant alleged to have made when it presented the Cheque to the plaintiff. The Plaintiff, undoubtedly, would have accepted the cheque on the belief that necessary funds will be available when the cheques are presented for encashment.
20. The Defendant has failed to arrange the required fund on the due date of the 1st Cheque for \$48,583.20 which was 31st January 2019. However, before the next cheque for \$ 2,100.00 was presented to the bank on 15th February 2019, the Defendant on 14th February 2019 has informed the Plaintiff by "Pex-11" not to bank the cheques and hold them till the funds are arranged. The contents of this letter and subsequent communications shows the bona-fide of the Defendant.
21. Damages are available as of right on proof of breach of contract. Contractual damages are compensatory and not punitive, i.e., they aim to compensate the claimant for losses suffered, as opposed to seeking to punish the defendant on its inability to arrange funds
22. The basic rule of recovery of compensation in the case of breach of contract is that the non-breaching party is to be put into the position it would have been in had the contract been performed as agreed (*Robinson v Harman (1848) 1 Ex 850*; and see *Surrey County Council v Bredero Homes Ltd [1993] 1 WLR 961*). This principle was also confirmed as fundamental in *Golden Strait Corporation v Nippon Yusen Kubushika Kaisha, The Golden Victory [2007] 2 WLR 691*.
23. In the matter in hand, the Defendant as the breacher of the agreement is obliged to pay damages to the plaintiff. At the trial, the plaintiff has discharged its onus in proving the special damages and damages for breach of contract.
24. I shall not order any damages for the alleged fraudulent misrepresentation as I am not satisfied of intentional fraud or misrepresentation on the part of the Defendant. However, on the strength of the available evidence, this court can safely arrive at a conclusion that the Defendant has breached the Agreement that it had entered into with Plaintiff for the purchasing of good on such terms with regard to the payments.

Thus, Court finds that the Defendant can be found liable for breach of agreement and payment of damages for the same.

25. The Plaintiff has also satisfied the Court that it had to incur substantial amount as the legal fees and costs as well by producing unchallenged documents marked as "Pex-13"
- a. A judgment is entered in favor of the plaintiff for a sum of \$50,583.20 being the special damages as per the paragraph I of the prayer to the Statement of claim.
 - b. The Plaintiff is entitled for general damages in a sum of \$5,000.00 for the breach of the agreement as prayed for in paragraph ii of the S. O. Claim.
 - c. There shall be 13% interest as prayed for on the adjudged amount payable from the date of filing the action till the date of judgment and further interest at the rate of 4% till the full sum is paid.
 - d. The Plaintiff is entitled to a summarily assessed cost of \$1000.00.
 - e. This judgment shall be sealed and served on the Defendant.




A.M. Mohammed Mackie
Judge

At High Court Lautoka this 29th of July 2022

SOLICITORS:

For the Applicant: Messrs Nand Lawyers

For the Defendants: Defendant absent and unrepresented