

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

**CIVIL APPEAL NO. HBA 6 OF 2022**

**BETWEEN** : **INDIAN SMART BUY PTE LTD** a company limited by shares having its registered office at Lautoka, Fiji.  
**1<sup>ST</sup> APPELLANT/ ORIGINAL 1<sup>ST</sup> DEFENDANT**

**AND** : **ANITA SINGH** and **SIDDHARTH SINGH** of 14 Mersay Lane Kermode Road, Lautoka, Director.  
**2<sup>ND</sup> APPELLANT/ ORIGINAL 3<sup>RD</sup> DEFENDANT**

**AND** : **SHAYAL MANESHA** trading as Emerald Closet.  
**RESPONDENT/ ORIGINAL PLAINTIFF**

**AND** : **SHWETA SHARMA** of 9 Avater, Waimalika, Nadi, Director.  
**2<sup>ND</sup> RESPONDENT/ ORIGINAL 2<sup>ND</sup> DEFENDANT**

**BEFORE** : Hon. Mr. Justice Mohamed Mackie

**APPEARANCES** : Mr. R. Charan for the 1<sup>st</sup> & 3<sup>rd</sup> Defendants - Appellant  
Mr. S. Nand for the Plaintiff - 1<sup>st</sup> Respondent  
Mr. A. Bauleka for the 2<sup>nd</sup> Defendant - 2<sup>nd</sup> Respondent

**DATE OF HEARING** : 27<sup>th</sup> October, 2022

**WRITTEN SUBMISSIONS:** By the plaintiff-Respondent filed on 27<sup>th</sup> October, 2022.  
No Written submissions filed by the 1<sup>st</sup> & 3<sup>rd</sup> Defendants as directed by the Court.

**DATE OF JUDGMENT** : 1<sup>st</sup> February, 2023

**JUDGMENT**

**A. INTRODUCTION:**

1. This is an Appeal by the 1<sup>st</sup> and 3<sup>rd</sup> Defendant -Appellants (“the 1<sup>st</sup> & 3<sup>rd</sup> Defendants”) against the Ruling dated 22<sup>nd</sup> March, 2022 pronounced by the learned Magistrate at the Magistrate’s Court of Lautoka, ordering the Appellants and the 2<sup>nd</sup> Defendant- Respondent (“the 2<sup>nd</sup> Defendant”) to pay the Plaintiff-Respondent (the Plaintiff) a sum of \$21,700.00 as prayed for, together with 10% interest on the said sum from the date of the impugned Judgment.

**B. BACKGROUND:**

2. The Plaintiff ,SHAYAL SHARMA, in her Statement of Claim (SOC) averred, *inter-alia*, **THAT;**

- a. She being the sole person trading as 'Emerald Closet' and the Defendants, the 1<sup>st</sup> Defendant being a limited liability Company under the name and style of 'Indian Smart Buy Pvt Ltd and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, being the Directors thereof, on 05<sup>th</sup> February, 2020, entered into a Sale and Purchase Agreement for the Defendants to sell their operational business, with various items of clothes, along with some other things, and the Plaintiff to buy the same for a sum of \$15,000.00.
  - b. She paid the said sum of Fifteen Thousand (\$15,000.00) as per clause 2 of the Agreement (\$ 10,000.00 for the stocks & \$5,000.00 for tangible Assets), and took the possession of the retail shop and started trading under her own Company name "Emerald Closet".
  - c. She also was allowed to take over the tenancy over its business and from the execution of the Agreement she paid the rent.
  - d. The Defendants, in breach of the Agreement either by its agents and/or servants, and with other people, on or about the 14<sup>th</sup> February, 2020 forcefully entered the shop and illegally took possession of the stocks worth of \$6,000.00 and cash in a sum of \$700.00.
  - e. Despite her request to the Defendants to pay for all the stocks and the cash they took away, the Defendants neglected and refused to pay, and as a result she has suffered lost.
3. The 1<sup>st</sup> and 3<sup>rd</sup> Defendants, by their joint Statement of Defence (SOD),
- a. Having admitted the contents of paragraph 1-3 of the SOC, denied the Agreement mentioned in paragraph 4 thereof and took up a position that the description of the 2<sup>nd</sup> Defendant in the Agreement is misconceived, the 2<sup>nd</sup> Defendant had no any ostensible or absolute authority to act on behalf of the 1<sup>st</sup> Defendant in selling the assets and business, and there was no any resolution in that regard, thus the Agreement is illegal and unenforceable.
  - b. Denied the receipt of any money as averred in paragraph 5 of the SOC. Further, in paragraph 6 of the SOD, having admitted the contents of paragraph 6 of the SOC, which described as to how the Plaintiff came into the possession of the disputed business premises, took up a contrary position in the same paragraph that the plaintiff unlawfully and without any color of right trespassed into the 1<sup>st</sup> Defendant's premises.
  - c. Also denied the allegation of forceful entry, repossession of the stocks and taking away of the same with \$700.00 in cash.
  - d. By advancing a counter- claim, alleged that in February, 2020, the Plaintiff wrongfully entered and took possession of the 1<sup>st</sup> Defendant's shop and its business, misrepresented to the 1<sup>st</sup> Defendant's customers that she (the Plaintiff) is the owner of the shop and sold clothes belonging to the 1<sup>st</sup> Defendant.
  - e. Due to continued threat and harassment from the Plaintiff they had to remove all the items from their shop, the Plaintiff disparaged the 1<sup>st</sup> Defendant's business causing damages to its reputation among its customers and thereby they were forced to close the business.

Accordingly, 1<sup>st</sup> and 3<sup>rd</sup> Defendants claimed for damages as per the prayers to the Statement of Defence. Notably, they did not pray for any relief in respect of the claim by the Plaintiff.

4. At the Magistrate's Court trial, both parties called one witness each and produced their documents (5 documents for the Plaintiff & 6 documents for the Defendants). After entertaining written submissions from both the parties, on 30<sup>th</sup> March, 2022, the learned Magistrate handed down a judgment in favor of the Plaintiff in the sum of \$21,700.00, with the interest at the rate of 10% and

costs of \$1000.00. No decision was passed on the Counter-claim advanced by the Defendants. The 1<sup>st</sup> and 3<sup>rd</sup> Defendants appealed to this court.

5. The learned Magistrate, in his impugned judgment, has arrived at the following findings **THAT;**

- a. *"The Court is of the view that the actions of the 2<sup>nd</sup> Director bind the Company and other directors to the contract. The Plaintiff had acted in good faith in entering into the agreement with the 2<sup>nd</sup> defendant on behalf of the Company. "*
- b. *"The sale and purchase Agreement (Pl.Ex -3) confirms that the agreement was between Indian Smart Buy PTE and Emerald Closet. The agreement was signed by and between the 2<sup>nd</sup> defendant Shweta Sharma, who as one of the Directors had acted on behalf of the Company, and the Plaintiff, who owns Emerald Closet."*
- c. *There was a document tendered by the plaintiff confirming that she has made payments totaling to \$10,000.00 (pl exhibit -2). The document was signed by the 2<sup>nd</sup> Defendant and the Plaintiff, confirming payment. There is evidence that the 2<sup>nd</sup> Defendant had flew to India after she made the agreement with the plaintiff and she had not returned.*
- d. *The Court after hearing the evidence from the plaintiff and the 3<sup>rd</sup> Defendant and after considering the documents tendered finds there are merits in that application by the plaintiff to be compensated for damages she suffered from the actions of the Defendants for breach of contract. There are merits in the Plaintiff's case on the balance of probabilities"*

**C. GROUND OF APPEAL:**

6. The 1<sup>st</sup> & 3<sup>rd</sup> Defendants have relied on 13 ,purported, grounds of Appeal , which are reproduced hereof for the sake of clarity and easy reference;

1. *THAT the Learned Magistrate erred in law and in fact in incorrectly applying the rules of service of the Writ of Summons on the 2nd Respondent (Original 2nd Defendant) as proper service when in fact the 2nd Respondent was not residing within the Jurisdiction of Fiji at the time the proceeding was instituted.*
2. *THAT the Learned Magistrate erred in law and in fact in incorrectly applying the principles relating to execution of agreement/deed in relation to a company by accepting an agreement/deed executed by a director on behalf of the Company is proper without a company resolution.*
3. *THAT the Learned Magistrate erred in law and in fact by concluding that the agreement executed by the 2nd Respondent is proper as the per principles relating to execution of agreement/deed in relation to a company.*
4. *THAT the Learned Magistrate erred in law and in fact by considering that the 1st Respondent paid the 2nd Respondent in total \$15,000.00 whereas only \$10,000.00 was paid and \$5,000.00 was given in evidence and in the purported sale & purchase agreement to be paid in installment within 4 months.*
5. *THAT the Learned Magistrate erred in law and in fact by not considering that the 1st Respondent did not have a tenancy of the premises in question and without lawful authority took possession of the 1st Appellant.*

6. *THAT the Learned Magistrate erred in law and in fact by considering that the 1st Respondent's stock worth \$6,000.00 was repossessed by the 2nd Appellants when no such evidence was led before the court during trial.*
7. *THAT the Learned Magistrate erred in law and in fact by considering that Original Order No. 18270 as the receipt for the monies paid to the 2nd Respondent.*
8. *THAT the Learned Magistrate erred in law and in fact by not considering the Original Order No. 18270 tendered by the 1st Respondent as evidence and relied upon stated that "received for sale of 80% Share of Indian Smart Buy" issued to the 1st Respondent by the 2nd Respondent*
9. *THAT the Learned Magistrate erred in law and in fact by not considering the evidence tendered by the 2nd Appellants at trial consisting of email, messages and chats between the 1st and 2nd Respondents whereas the 2nd Respondent and the 1st Name 2nd Appellant are directors of the 1st Appellant and she was privy to the information.*
10. *THAT the Learned Magistrate erred in law and in fact by not considering the documents tendered in support of the counterclaim.*
11. *THAT the Learned Magistrate erred in law and in fact by not considering the common seal of the 1st Appellant on the purported sales and purchase was not the common seal of the company and the correct common seal was Defendant's Exhibit 2 tendered in trial.*
12. *THAT the Learned Magistrate erred in law and in fact in incorrectly ding the Judgment in favour of the 1st Respondent.*
13. *THAT the Learned Magistrate erred in law and in fact in incorrectly applying the principles relating to Contract between the 1st and 2nd Respondent.*

**D. ANALYSIS & DECISION:**

7. I, have carefully perused the contents of the Magistrate's Court record, including the impugned judgment, and the contents of the record of this Court, including the oral submissions of both the Counsel and the written submissions made available before this Court by the Counsel for the Respondent. No written submission was filed on behalf of the Defendants as per the direction.
8. Though, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants in paragraph 4 of their SOD had denied the averments in paragraph 4 of the SOC with regard to entering into the Agreement with the plaintiff, by further averments in paragraphs 4 (i), (ii), (iii), (iv) and (v) of the SOD, they have tacitly admitted the execution and existence of the Agreement marked as "PEX-3".
9. Further, it is to be noted that the Plaintiff's claim in paragraph 6 of the SOC about her coming into the possession of the relevant business premises and starting her business, trading as 'Emerald Closet' therein, has been clearly admitted by the Defendants in paragraph 6 of their SOD. It is also observed that the entry of the Plaintiff to the premises and carrying on with her business therein till 14<sup>th</sup> February, 2020 would not have been possible for the Plaintiff, if not for the disputed Agreement entered into with the Defendants, through the 2<sup>nd</sup> Defendant Director, who has now gone to India.
10. My above observation is fortified further by the obvious failure of the Defendants to respond to the contents of paragraph 7 of the SOC, wherein the Plaintiff has categorically stated that the

Defendants allowed the Plaintiff to take over the tenancy over its business, for which she had paid \$10,000.00 as initial payment prior to the execution of the Agreement.

11. If the contention of the Defendants in paragraph 7 of their SOD are true, by which they dispute the contents of paragraph 8 of the SOC about the breach of the Agreement and forceful entry by the Plaintiff, the Defendants could very well have summoned the Landlord or the Rent collector, thereof to prove the contention of the Defendants. The Defendants for the reason best known to them did not call any such witness. Instead, they are in an attempt to paint a different picture by pleading ignorance about the Agreement and portraying the Plaintiff as a trespasser.
12. If the Plaintiff had entered the premises without any right or authority, the Defendants need not have entered into the premises on 14<sup>th</sup> February, 2020 as admitted by the 1<sup>st</sup> named 3<sup>rd</sup> Defendant towards the end of her examination in chief at page 34 of the proceedings. If the Plaintiff had entered the relevant premises unlawfully and/ or without any right, the Defendants could very well have made a complaint to the Police and obtained not only the stocks, but the possession of the premises as well.
13. The evidence of the Plaintiff clearly demonstrates that she on or about 5<sup>th</sup> Feb, 2020 had entered into the Agreement marked as "Pex-3" with the 2<sup>nd</sup> Defendant, who had acted for the other Defendants, and she commenced her business in the premises where the Defendant had run their business under the name and style of "Indian Smart Buy". It also demonstrates that she had already paid in installments a sum of \$10,000.00 out of the agreed \$15,000.00 and balance amount of \$5,000.00 was to be paid later in installments, for the sale of the 1<sup>st</sup> defendant's stocks and other Tangible assets. However, before the subsequent payments eventuated, on 14<sup>th</sup> February, 2020, the Defendants entered the premises and forcibly took away the stocks and \$700.00 in cash as alleged by the Plaintiff.
14. The Plaintiff in her evidence has admitted that before she could settle the balance \$5,000.00, the 3<sup>rd</sup> Defendants and their agents entered the premises and took away the stock and Money. This has happened even before the expiry 2 weeks from the date of the Agreement. The evidence of the plaintiff in this regard has remained unassailed.
15. Turning towards the Grounds of Appeal, I find that the 1<sup>st</sup> ground of the Appeal is with regard to the alleged incorrect application of the mode of service of summons on the 2<sup>nd</sup> Defendant as proper service, when she was not residing within the jurisdiction. Counsel for the Plaintiff concedes the fact that no service was effected on the 2<sup>nd</sup> Defendant personally as she had no local address in Fiji and as it was not practical to serve in India.

The arguments advanced on behalf of the Appellants in this regard hold no water in view of Order 7, Rule 11 of the Magistrates Court Rules of 1944, which reads as follows;

*"Where s suit is against a defendant residing out of but carrying on business within Fiji in his or her own name, or under the name of a firm, through an authorized agent, and such suit is limited to a cause of action which arouse within the jurisdiction of the Court, the writ or document may be served by giving it to such agent, and such service shall be equivalent to personal service on the defendant"*

In this matter in hand, the writ was served on the 1<sup>st</sup> named 3<sup>rd</sup> Defendant, who is also a Director of the 1<sup>st</sup> Defendant Company, and in view of the above Order and Rule, this service can be treated as proper service on the 2<sup>nd</sup> Defendant Director. The 2<sup>nd</sup> Defendant need not be personally served as the service on the 1<sup>st</sup> named 3<sup>rd</sup> Defendant is recognized as a proper service on the 2<sup>nd</sup>

defendant as well and accordingly she also become liable to the Plaintiff under corporate responsibility.

The 2<sup>nd</sup> Defendant, who was, admittedly, not served with the writ personally here in Fiji or out of jurisdiction, cannot claim that she is not bound by the judgment. Further, she even cannot apply to have the judgment set aside as he has been covered by the service on the 1<sup>st</sup> named 3<sup>rd</sup> Defendant as former's agent. Accordingly, the 1<sup>st</sup> ground hereof will not salvage any of the Defendants.

16. As far as the **grounds of Appeal Nos. 2, 3, 7 and 13** are concerned, they can be addressed in one breath by referring to the decision of Master J.Udit, in FJHC **365 n Dominion Finance Co Ltd v. Carpenters Fiji Ltd [2008]** where it was stated in paragraph 21 that 'it is mandatory for the signatory to be a person acting under the authority either 'expressed or implied' of the Company.

17. In the present matter, the learned Magistrate has carefully considered the evidence adduced before him and correctly arrived at the finding that a valid Agreement was made in compliance with the principles of contract. In arriving at his decision in this regard, the learned Magistrate seems to have been correctly guided by the often cited authority in **Royal British Bank v. Turquand [1856]6 E & B 327** which provided that;

*'... the effect that third parties dealing with companies although assumed to have notice of the contents of the Companies memorandum and articles nevertheless , not required to satisfy themselves that all the internal ; regulations of the Company have been complied with...'*

18. Accordingly, in his ruling the learned Magistrate has stated that in the light of the above, the 2<sup>nd</sup> Defendant was not required to satisfy that the internal requirements were met. It can be assumed by the person entering into a contract that all the internal requirements have been completed at the time of the execution of the Agreement.

19. When arriving at the impugned decision, the learned Magistrate also seems to have been correctly guided by the following passage in "The Principle of Modern Company Law" (6<sup>th</sup> Edi) at page 224, which states;

*'Where the person through whom the third party dealt occupies a position in the Company such that it would be usual for an occupant of that position to have authority to bind the Company in relation to the transaction, the company will be bound'*

20. This Court is convinced that the learned Magistrate was of the correct view that the 2<sup>nd</sup> Defendant, namely, SHWETHA SHARMA, when executing the Sale and Purchase Agreement marked as "Pex-3", held the position as the representative of the 1<sup>st</sup> Defendant Company. At the same time the Plaintiff has acted in good faith and relied on the 2<sup>nd</sup> Defendant as the Director while entering into the Agreement. Hence, no blame can be pinned on the finding of the learned Magistrate in this regard.

21. As far as the ground 4 is concerned, I find it is meritorious to some extent. Learned Magistrate seems to have added to the initial agreed amount of \$15,000.00, the value of the clothes that were, admittedly, removed by the 3<sup>rd</sup> Defendant, which was in the value of \$6,000.00 and a further sum of \$700.00 in cash allegedly removed. The 1<sup>st</sup> named 3<sup>rd</sup> Defendant in her evidence in chief (pages 27 & 34) has admitted the removal of clothes on the day of the incident and she has not disputed the claimed value thereof. She did not utter a word before the Magistrate with regard to the allegation of removal of cash in a sum of \$700.00.

22. It is in evidence that the Plaintiff had paid the 2<sup>nd</sup> Defendant only \$10,000.00 in number of installments prior to signing the Agreement on 5<sup>th</sup> February, 2020. The balance \$5,000.00 was not paid as admitted by the Plaintiff in her evidence. This was to be paid in 4 monthly instalments, but the incident occurred on 14<sup>th</sup> February, 2020, within 10 days from the date of the commencement of the business, leaving no room for the balance payments to be paid. But, the Magistrate seems to have done the assessment on the understanding that \$5,000.00 had already been paid. There is no specific evidence on loss and damages, except for the initial payment of \$10,000.00 and on the value of clothes & cash taken away by the 3<sup>rd</sup> Defendant , which is in a sum of \$6,700.00, finally both totaling to \$16,700.00.
23. The Plaintiff claims back the advance amount of \$10,000.00 as part of damages. The Defendants state that what they have taken away is the Indian clothes that were there at the time of the incident. If the Plaintiff demands the initial payment of \$10,000.00 to be paid back, she cannot claim for the Indian clothes taken away by the Defendants or the value of it. In fairness to both the parties, I decide to deduct from the said sum of \$16,700 .00, a sum of \$6,000.00 being the value of the clothes, admittedly, taken away by the Defendants, which brings down the balance payable to a sum of \$10,700.00. Additionally, for the damages on account of breach of contract, for which the Plaintiff should be entitled, I add a further sum of \$3,000.00 to be paid by the Defendants unto the Plaintiff making the total sum payable as \$13,700.00.
24. Coming to the ground 5, which is on the question of tenancy for the premises, where the Plaintiff was to run the business, the clause 5:1 Sales and Purchase Agreement demonstrate it with no ambiguity that the Plaintiff was permitted to occupy it with the arrangement for the assignment of the lease. If it was the position of the Defendants that there was no tenancy or lease or arrangement for the assignment of lease, the Defendants should have brought evidence in that regard by calling the owner of the building or his/her agent. Since the Court has recognized the Agreement marked as "Pex-3", this ground of Appeal has no merit.
25. Ground 6 adduced by the Defendants will not warrant favorable consideration. This ground is formulated on the footing that there was no evidence before the Magistrate to prove the re-possession of stocks worth of \$6,000.00 by the Defendants. As I observed in foregoing paragraphs, the 1<sup>st</sup> named 3<sup>rd</sup> Defendant in her evidence has clearly admitted the removal of clothes.
26. The learned Magistrate has arrived at well considered decision that the 2<sup>nd</sup> Respondent had the authority to enter into the Agreement and the action of the 2<sup>nd</sup> Respondent bind the Company and other Directors of the 1<sup>st</sup> Defendant Company as well. The issue raised about the Company seal need not necessarily vitiate the Agreement. The Companies Act 2015 recognizes any Deeds or documents as valid even in the absence of the Company seal.
27. With the above findings in relation to the main purported grounds of Appeal adduced on behalf of the Defendants, I do not see any necessity to delve into the rest of the grounds of Appeal.

**E. CONCLUSION:**

28. Accordingly, in the light of what has been discussed above, in relation to the main grounds of Appeal adduced on behalf of the Defendants (the Appellants), I don't see any reason to interfere with the findings of the learned Magistrate, except for varying the quantum of damages, which is warranted by the careful scrutiny of ground of Appeal No.4.

The Plaintiff shall be entitled to recover from the Defendants the initial advance payment of \$10,000.00, together with \$700.00 being the cash taken away and a further sum of \$3,000.00 as the damages for the breach of contract. The ratio of interest awarded by the learned Magistrate will remain intact.

**F. FINAL DECISION:**

1. The Appeal by the Defendants against the judgment dated 30<sup>th</sup> March, 2022 is partly allowed.
2. The impugned judgment is hereby affirmed, however, subject to variation of the adjudged sum by the learned Magistrate.
3. The Plaintiff is entitled only to recover a sum of \$13,700.00 together with interest.
4. The amount of costs ordered by the learned Magistrate shall remain intact.
5. No costs ordered on account of the proceedings before this Court.



**A.M. Mohamed Mackie**  
**Judge**

**At High Court Lautoka this 1<sup>st</sup> day of February, 2023.**

**SOLICITORS:**

**For the Appellants: Ravneet Charan Lawyers**  
**For the Respondents: S. Nand Lawyers**