

**IN THE HIGH COURT OF FIJI AT LABASA**  
**CIVIL JURISDICTION**

Civil Action No. HBC 07 of 2021

BETWEEN

**MERIDIAN ENGINEERING PTE LIMITED** a limited liability company having its registered office at Lot 5 Marina Road, Fantasy Island, Nadi.

PLAINTIFF

AND

**AIYUB KHAN** trading as **A. KHAN HIRE SERVICES** of Tabia, Labasa,  
Contractor.

DEFENDANT

**Counsel** : Mr. A. K. Narayan [Jr.] for Plaintiff  
Mr. A. Sen for Defendant

**Date of Hearing** : 13<sup>th</sup> March 2023

**Date of Judgment** : 26<sup>th</sup> July 2023

## RULING

[On Plaintiff's summons for Judgment on Admission]

[1] The Plaintiffs filed this Summons dated 1<sup>st</sup> December 2021 for Judgment on Admission seeking following orders against the defendant:

1. A final judgment of part of the Plaintiff's claim against the Defendant being a sum of FJ\$ 141,971.82 or such other sum as Court deems just.
2. A final judgment on interest in the sum provided in [1] above at the rate of 13.5% per annum pursuant to the Law Reform (Miscellaneous Provisions) (Death and Interest) Act for the period 6<sup>th</sup> May 2020 to the date of satisfaction of the amount in full.
3. A final judgment on post judgment interest in the sum provided in [1] at the rate of 4% per annum from the date of judgment to the date of satisfaction of the amount in full.
4. Costs of and incidental to this application in favour of the Plaintiff on a full Solicitor Client indemnity basis.
5. And such other orders Court deems fit.

[2] The Summons was supported by an affidavit of Mr. Gregory Eric Carr, Director of the Plaintiff Company. In that Mr. Carr states that the Defendant was engaged by the Fiji Roads Authority as a main contractor to construct a bridge at Nayarabale in Vaualevu.

The Defendant subcontracted some works to the Plaintiff for the drilling and pile driving of structural components of the bridge in consideration of the payment by the Defendant to the Plaintiff in the sum of FJ\$ 417,034.00. A quotation was provided by the Plaintiff on 12<sup>th</sup> April 2019 which was accepted by the Defendant which formed a contract between parties.

- [3] The Plaintiff states that the Defendant under the contract was required to make prompt and timely payments on the completion of the various stages of work by the Plaintiff. While the works were being completed the Defendant on or about 11<sup>th</sup> October 2019 requested his project engineers to vary the initial certified drawings. Accordingly the Plaintiff undertook and completed the variation works and an invoice was issued to the Defendant.
- [4] The total sum of the works including variations carried out by the Plaintiff as of 06<sup>th</sup> May 2020 amounted to FJ\$454,747.32. Plaintiff states according to their records the Defendant had paid them a total sum of FJ\$312,775.50 leaving a balance of FJ\$141,971.82.
- [5] Mr. Curr during his visit to Labasa on 29<sup>th</sup> April 2020 delivered the pending invoices to the Defendant and he was advised to complete the project and the payments will be made in due course. However no payments were made.
- [6] The Plaintiff reveals very pertinent information next, which would assist in making a determination of this summons seeking judgement on admissions.
- [7] Subsequent to the non-payment by the Defendant, Plaintiff issued a demand notice for the balance of FJ\$141,971.82. The Defendant's Administration Manager replied to the demand notice informing that they do not agree with the amount. When sought clarification the Defendant stated that according to their records the amount owed would be \$95,959.00. Plaintiff's Solicitors then requested the Defendant to make immediate

payment of the said sum, but it was again refused by the Defendant and later said that they only owe \$12,642.12.

- [8] The Plaintiff states that they incurred stand down costs due to delays of the payments by the Defendant.
- [9] In response to the summons the Defendant states that in the quotation which both parties agreed upon, stated specifications of the liner metre drilling and pile driving. However the Defendant's position is that the Plaintiff raised invoices contrary to the quote and to the actual work that has been carried out. Therefore Defendant states that his Administration Officer's acknowledgments to the amounts due were done without his authority and without the actual data sheets relating to work carried out by the Plaintiff.
- [10] The Defendant states that the Plaintiff had to provide him with the data sheet of actual work undertaken on the ground in terms of drilling and pile driving and to date this has not been done by the Plaintiff.
- [11] Order 27 Rule 3 of the **High Court Rules 1988** states as follows; "Where admissions of fact or of part of a case are made by a party to a cause or matter either by his or her pleading or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he or she may be entitled to without waiting for the determination of any other question between the parties and the Court may give such judgment or make such order on the application as it thinks just."
- [12] The decision to enter a judgment on admission, would be a discretionary matter for the Court. The Supreme Court Practice 1999 "White Book" at page 521 states "The jurisdiction of the Court is discretionary but in the absence of reason to the contrary the order is made so as to save time and costs".
- [13] In **Ali's Civil Engineering Ltd v Habib Bank Ltd** [2019] CBV 00016 of 2018 His Lordship Marsoof J. discussed the Indian legal provisions similar to Order 27 and how the Courts

should use its discretion. At paragraph 40 His Lordship stated ‘Dealing with the identical worded corresponding provision of the Indian Civil Procedure Code, the Supreme Court of India has consistently taken the view that “the discretion conferred under Order XII Rule 6 of CPC is to be exercised judiciously, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant (*Himani Alloys Limited v Tata Steel Limited* (2011) 15 SCC 273 para 11 (per Raveendran, J) followed in *Hari Steel and General Industries Ltd. & Anr. v Daljit Singh & Ors.*2019 (4) MLJ 100 In my opinion, the above quoted observation of the Indian Supreme Court will apply with the same force to the interpretation of the identically worded Fijian provision, which is derived from the same source, namely the laws of England”.

- [14] Order 27 Rule 3 grants powers to the High Court to issue Judgment on Admissions either by pleadings or otherwise. Perusal of pleadings reveals that the Defendant’s partial payments were made on alleged misrepresentations by the Plaintiff on actual work undertaken by them. The Defendant states that they discovered this after obtaining the actual data sheets pertaining to drilling and piling somewhere in May 2020.
- [15] Plaintiff’s Solicitors had several email exchanges with the staff of the Defendant following their Demand Notice on 23<sup>rd</sup> November 2020. It appears to me that the very first response by the Administration Manager of the Defendant denied any admissions to the sum stated in the Demand Notice. However the next day, an Associate of Plaintiff’s Solicitors prompted the Defendant to make a statement to the amount owing according to their records. The Plaintiff’s Administration Manager then stated that their records indicate \$95,959.00 as the outstanding sum. The Defendant himself later confronted the Plaintiff’s Solicitors requesting the Plaintiff to provide supporting documents to substantiate their claim.

- [16] These events demonstrate to me that the two parties equally equipped to contest the matter and the Court must examine their oral testimonies in making a final determination. The Defendant has expressly denied what Plaintiff has sought as relief. Furthermore the Defendant states that the Plaintiff added stand down costs to their claim after the Defendant discovered and obtained the actual drilling and piling data.
- [17] For the reasons aforementioned the Court notes that there are triable issues in the action. Hence I am not inclined to enter judgment pursuant to Order 27 Rule 3 of the High Court Rules 1988. Parties must expeditiously take the next pre-trial steps to have this matter heard before the Court.

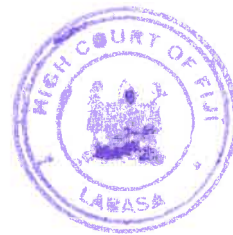
**ORDERS**

1. The Summons dated 01<sup>st</sup> December 2021 for Judgment on Admission by the Plaintiff hereby dismissed.
2. Plaintiff to pay \$1000 (one thousand dollars) to the Defendant as cost within 14 days of this ruling.



Yohan Liyanage

JUDGE



At Labasa on 26<sup>th</sup> July 2023