

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HBC 122 of 2017

BETWEEN : **ARCHITECTS PACIFIC LIMITED**

PLAINTIFF

AND : **SKYLINE ESTATE INVESTMENT COMPANY (FIJI)
LIMITED.**

DEFENDANT

BEFORE : **M. Javed Mansoor, J**

COUNSEL : **Mr. P. Knight for the plaintiff**
Mr. I. Matanitobua for the defendant

Date of Hearing : **30 & 31 May 2023**

Date of Judgment : **8 January 2024**

JUDGMENT

CONTRACT

*Recovery of payment for services rendered – Evidence
not led on behalf of defendant – Counter claim struck off*

1. The plaintiff provides architectural services. The defendant is engaged in property development. Both companies are Fiji incorporated. The plaintiff's action is to recover a sum of US \$153,000.00 for rendering architectural services to the defendant for a proposed development at Maui Bay along Fiji's coral coast.
2. In its statement of claim, the plaintiff stated that it was engaged by the defendant in 2014 for the provision of architectural services for the proposed development, and that the plaintiff prepared and provided a master plan for which the defendant paid US \$125,000.00.
3. Thereafter, the defendant engaged the plaintiff to prepare concept designs for the project. The plaintiff provided those designs to the defendant. The plaintiff states that it issued the defendant a bill of costs on 8 May 2015 in the sum of US \$258,000.00. The defendant paid the plaintiff US \$105,000.00 as an advance, but failed to settle the balance outstanding sum of US \$153,000.00.
4. In its statement of defence, the defendant denied the plaintiff's claim and raised a counter claim seeking to recover damages for payment of US \$455,450.03 paid as architectural fees to the plaintiff. In addition, general damages were sought for breach of duty of care. The plaintiff denied the counter claim.
5. The parties raised the following issues:
 - a. "Is the plaintiff entitled to recover from the Defendant the sum of US\$153,000.00 or any part thereof?
 - b. Is the plaintiff entitled to recover from the defendant interest of the said sum of US\$153,000.00 or any part thereof, and if so, at what rate of interest and for what period?

- c. Was the plaintiff guilty of negligence in preparing the master plans and concept designs for the defendants development as alleged by the defendant?
 - d. Is it not possible to build the facilities as conceptualised by the plaintiff's concept design documentation?
 - e. If the answer to paragraphs 2.3 and / or 2.4 above is yes, has the defendant suffered loss and damages as alleged?
 - f. If yes, is the defendant entitled to recover from the plaintiff special and / or general damages and, if so, how much?
 - g. Is the defendant entitled to recover from the plaintiff interest on any damages awarded against the plaintiff and, if so, at what rate of interest and for what period?
 - h. Is either party entitled to costs of the proceedings against the other and, if so, on what basis?"
6. The background to the contract between the parties is not in dispute. The defendant purchased vacant land at Maui Bay, consisting of 75 individual lots for a sum of \$9,739,232.63. The intention was to develop the land by constructing a facility including a hotel, villa and apartment type accommodation, restaurants, entertainment and train station facilities which are collectively referred to as the Maui Castle Estate. The defendant engaged the plaintiff's services for the project, and accepted the plaintiff's proposal dated 20 December 2014 to provide architectural services. According to the proposal, the plaintiff was to provide the defendant a concept master plan, which was to be prepared in three phases identified as preliminary studies, preliminary concept master plan and final concept master plan.
7. At the trial, the plaintiff led the evidence of Amitia Suliana Huggett. The witness is a director of the plaintiff, and appointed to its board in 2015. She has worked for the plaintiff for more than 15 years. The father of the witness, Stuart Huggett was the firm's senior partner, and was involved in providing services to the defendant. He died some time ago.

8. When examined, the witness stated that a draft of the amounts to be paid was given by a proposal dated 24 February 2015. This was followed up with an invoice dated 8 May 2015 seeking payment in a sum of \$153,000.00. The witness stated that the fee for drawing up a concept paper was \$258,000.00. The firm was paid a mobilization fee of \$105,000.00 by the defendant. The plaintiff stated that the firm had prepared three dimensional models in submitting a concept for development of the property. A presentation was done in Hong Kong at which the directors of the defendant were present. The witness produced photographs of the models that were prepared. She said that the firm did a large amount of work, including the concept for development of the land following a briefing by the client. Guidelines of the British Institute of Architects, the New Zealand Institute of Architects and the Fiji Institute of Architects were followed in providing the services. The witness said that the project was feasible, and the concept planning was done according to the determination by the lands department. Although the defendant was sent a bill, the witness said, the outstanding sum was not paid.
9. In cross examination, the witness stated that she was in Fiji at the time instructions were received by the defendant to prepare a concept plan for development. She was involved in negotiations between her father, Mr. Huggett and the directors of the defendant. She attended several meetings. She said that her father signed the documents that were issued to the defendant. She was aware of the project plans and was briefed by her father. Counsel for the defendant put it to the witness that her evidence was hearsay on the basis that she learnt about the project from a third party. The witness says she is a representative of the company, and able to testify from company records and by her personal knowledge.
10. The witness made it clear the document was not a construction document, but gave an outline of the project. A concept paper, she explained, is a high level understanding with the client. She said that a concept is not a construction plan but a concept could be taken into a construction plan over time. The witness said that the briefing given by the defendant was site specific and not generally made. She said that the site was challenging and the design was in line with

instructions received from the defendant. The witness said that a due diligence of the project was carried out and the firm advised the defendant against over developing the land. The topography survey was carried out by a firm called Skyward Industries, which provided a topography report. The witness said she has inspected the site.

11. Defense counsel suggested to the witness that the defendant has paid the plaintiff a sum of US \$445,450.03. The witness was unaware of this payment but said that this could have been in respect of several other payments that were due to the plaintiff for services rendered.
12. In re-examination the witness explained that the construction document was valued at US \$1,500,000.00 and that the outstanding invoice did not relate to the preparation of a construction document. She said that the plaintiff did not agree to prepare a construction plan at the quoted fee, and that the construction plan would have been developed in terms of the concept design.
13. Counsel for the defendant did not lead evidence saying that the company director is not available.
14. The plaintiff's evidence is that is services were rendered to the defendant on an agreed fee proposal. The invoice dated 8 May 2015 shows the plaintiff's total agreed fee as US \$2,580,000.00, out of which the fee for the completion of the concept design is shown as US \$258,000.00. The fee for construction documentation is shown as US \$1,548,000.00. The defendant paid a mobilisation amount of US \$105,000.00 at the outset. After giving credit to the mobilisation payment, there is an outstanding of US \$153,000.00. In cross examination, the plaintiff's evidence was not discredited. I accept the evidence given by the plaintiff's evidence. There is no testimony on behalf of the defendant to establish that the plaintiff's claim was settled or to support the counter claim.
15. The plaintiff's claim is allowed. The counter claim is struck off.

ORDER

- A. Judgment is granted in favour of the plaintiff in the sum of US \$153,000.00.
- B. The counter claim is struck off.
- C. The defendant is to pay the plaintiff costs summarily assessed in the sum of \$4,000.00 within 21 days of the judgment

Delivered at **Suva** on this 8th day of **January, 2024**.



M. Javed Mansoor
Judge