

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

Civil Action No. **HBC 277 of 2020**

**BETWEEN** : **RUHI INVESTMENTS PTE LTD** of Lot 124, Lomaivuna,  
Naitasiri, Fiji

**PLAINTIFF**

**AND** : **RAVIN VIKASH LAL** of Lot 90, Sector 5, Lomaivuna,  
Naitasiri, Fiji

**DEFENDANT**

**Coram** : **Banuve, J**

**Appearances** : Mr. Y. Kumar for the Plaintiff  
Mr. L. Cati, Mr. E. Navuda, Ms. M. Koroibola for the  
Defendant

**Date of Hearing** : 28<sup>th</sup> May 2024

**Date of Ruling** : 04<sup>th</sup> September 2024

# RULING

## A. Introduction

1. A Writ of Summons with a Statement of Claim, indorsed, was filed on 22<sup>nd</sup> September, 2020 alleging breach by the Defendant of an Agreement with the Plaintiff, a foreign investor from India, that they jointly inject a sum of FJD\$50,000.00 each towards setting up a poultry rearing business in Lomaivuna, Naitasiri, on land leased by the Defendant. Fraud also is being alleged and particularized.
2. The Defendant allegedly breached the Agreement by neither injecting his share of the capital into the business and rather getting the Plaintiff to provide all the start-up capital of \$100,000, instead, nor transferring the subject land on which the poultry business was located to the Plaintiff, later.
3. The Defendant alleges that he has suffered substantial loss and damages and seek the following relief, consequently.
  - (i) Judgment in the sum of \$197,645.00.
  - (ii) Pre-judgment interest.
  - (iii) Post-judgment interest.
  - (iv) Cost on a solicitor/client indemnity basis.

## B. Background

4. The Plaintiff is a limited liability company. It was registered on 8<sup>th</sup> March 2016, as a private company limited by shares.<sup>1</sup> It has a Memorandum of Association and an Articles of Association, with 2 subscribers, Rajankumar Nitinbhai Naik and Ravin Vikash Lal, both dated 21<sup>st</sup> March 2016.

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<sup>1</sup> Certificate of Registration of Company. Exhibit A1.

5. The primary investment Agreement which the Plaintiff alleges was breached by the Defendant was an oral agreement that was entered into, on or about 2015 - 2016,<sup>2</sup> *prior to* the registration and incorporation of the Plaintiff.
6. Both parties have filed written submissions, with the Plaintiff filing its submissions late, on 13<sup>th</sup> August 2024, with the leave of the Court. The Defendant had filed its submissions on 11<sup>th</sup> July 2024, in accord with the directions of the Court. To address the non-compliance with directions, the Court allowed the Defendant to file a short reply to the Plaintiff's submissions.

### C. The Issues

7. The Court adopts the issues identified by the Plaintiff in its submissions,<sup>3</sup> as those to be determined by the Court;
  - (i) Whether the Defendant failed to invest \$50,000 as an investment for the business?
  - (ii) Whether the Defendant failed to transfer the land to Ruhi Investment?
  - (iii) Whether the Plaintiff has suffered substantial losses and damages having to relocate the chicken shed and further spending in the sum of \$60,000?
  - (iv) Whether the Plaintiff has therefore lost \$103,000 for investment due to fraudulent misrepresentation?
8. The Court notes that the Plaintiff is Ruhi Investment Pte Limited, not Rajankumar Nitinbhai Naik, the foreign investor from India who negotiated and reached an oral agreement with the Defendant, which the Plaintiff seeks to enforce in this proceeding. .
9. The verbal agreement which the Defendant allegedly breached was formed, before the Plaintiff was incorporated.

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<sup>2</sup> Paragraphs 1-10, **Closing Submissions** of the Plaintiff filed 13<sup>th</sup> August 2024 and paragraphs 11(a)-(g) **Closing Legal Submissions** of the Defendant filed on 11<sup>th</sup> July 2024.

<sup>3</sup> Paragraphs 12-15 of the Plaintiff's Closing Submissions

#### D. The Plaintiff's Case

10. The Plaintiff's evidence-in-chief was provided by Rajankumar Nitinbhal Naik, who is not a named party in this proceeding, nor is there any evidence that the Plaintiff has authorized him to provide this evidence on its behalf. The parties do not dispute that a verbal investment agreement was reached by the parties before the Plaintiff was incorporated, the dispute is on the terms of the agreement;
- (i) Ravin Lal, the Defendant, was introduced to Rajankumar Naik (*hereinafter* 'the parties') by his brother, a priest.
  - (ii) The Defendant informed Mr Naik that he had a proposal for the construction of 6-7 chicken sheds that could be constructed on 10 acres of land that he owned.
  - (iii) Mr Naik did not know anything about the operation of a 'chicken' business in Fiji and the Defendant informed him of the type of company, the role of Goodman Fielder in poultry farming and the profits to be obtained. In response, Naik informed the Defendant that he would study the proposal.
  - (iv) After studying the proposal over a period of 7-8 days the parties agreed with its objective, thereafter, the Defendant provided a list of items to be purchased. The parties agreed to invest an amount of FJD\$50,000 each, which the Defendant agreed to.
11. These were the terms of the Agreement, according to Mr Naik which the parties agreed to *before* formalizing their partnership by registering the Plaintiff, **Ruhi R Investment Pte Ltd**, with the Registrar of Companies on 8<sup>th</sup> March 2016.<sup>4</sup>
12. The constituent documents of the Plaintiff company, the Memorandum and Articles of Association had been subscribed to by the parties on 21<sup>st</sup> March 2016. The Plaintiff had been registered and granted a Foreign Registration Certificate No 16-0072, on 17<sup>th</sup> February 2016. It is unclear to the Court how this certification was granted, given the Plaintiff had not been incorporated then. Bureaucratic delay may be the reason, although the Court cannot be certain.

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<sup>4</sup> Company No RCBS2016L1538

## **E. The Defendant's Case**

13. Although, the Defendant do not dispute the sequence of events narrated by Mr Naik, prior to the incorporation of the Plaintiff, they dispute the terms of the agreement, as alleged by Mr Naik in his evidence, at trial, rather<sup>5</sup>;
- (i) The Defendant, a successful ginger and dalo farmer at Lomaivuna had wanted to venture into poultry farming at some stage, for which he had prepared a business plan, and had begun site preparation by hiring a digger, at cost, to level a site (1000 sqm), on his leasehold property.
  - (ii) The Defendant met Mr Naik, at Sawani, through his brother, a priest, in a meeting arranged by the Defendant's brother in law, Rajneesh Prasad. At the meeting Mr Naik expressed interest in the Defendant's business plan for the poultry farm. The initial purpose of the meeting was for the Defendant to seek the blessing of the priest for his business plan.
  - (iii) Subsequent to the initial meeting, the Defendant was again requested to attend a meeting at Sawani where Mr Naik expressed an interest to become a business partner with the Defendant in the poultry business venture, he was intending to set up.
  - (iv) Mr Naik kept calling on the Defendant about forming a business partnership until they reached a verbal agreement that Mr Naik would fund the investment, with an amount of \$100,000, with the Defendant allocating land for the poultry shed from his leasehold property at Lot 90, Plan R 1837 SHT II Sector 5, Lomaivuna and manage production operations.
  - (v) The parties engaged a lawyer, after reaching this agreement.

## **F. Analysis**

14. The verbal agreement reached between the parties would have been formed some time in 2015-16, before 8<sup>th</sup> March 2016, when the Plaintiff was incorporated.

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<sup>5</sup> p 64-66 of **Court Transcript**

15. The parties appear not to be in dispute that the agreement was verbal in nature and that the Plaintiff was not a party to it, rather the parties to the agreement were Mr Rajankumar Nitinbhai Naik, on one hand and Mr Ravin Vikash Lal, the Defendant, on the other. The parties dispute the terms of the agreement
16. It was after this verbal agreement was reached that the parties then engaged a private legal practitioner in Nausori to compile documents for the incorporation of the Plaintiff; the Memorandum and Articles of Association (21<sup>st</sup> March 2016), a Foreign Investment Registration Certificate 16-0072 (17<sup>th</sup> February 2016), and the Certificate of Registration of a Company – No RCBS2016L1538 (8<sup>th</sup> March 2016).
17. The Plaintiff, as a corporate entity, did not come into existence until 8<sup>th</sup> March 2016.
18. There is no evidence proffered by Mr Naik as to the authority he was exercising on behalf of the Plaintiff, in his negotiating and reaching the verbal agreement with the Defendant, *prior to* the incorporation of the Plaintiff, on 8<sup>th</sup> March 2016.<sup>6</sup>
19. This is a relevant issue as Mr Naik is not a party in this proceeding rather, the sole Plaintiff, pursuing the claim for breach of the verbal agreement is Ruhi Investment Pte Ltd, an entity which had not been incorporated, when the agreement was entered into.
20. If Mr Naik was negotiating the agreement for the Plaintiff *,before it was incorporated,* then the relevant principles governing the ratification of pre-incorporation contracts may be relevant to elicit whether the terms of the agreement settled by Mr Naik, maybe pursued by the Plaintiff, *after* it was incorporated,
21. Section 73 of the *Companies Act 2015*, ('Pre-Incorporation Contracts') states;
  - (1) *A person may enter into a written agreement in the name of, or purport to act in the name of, or on behalf of, an entity that is contemplated to be registered as a Company under this Act, but does not yet exist at the time.*

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<sup>6</sup> *Black v Smallwood* [1966] HCA 2; (1966) 117 CLR 52 (25 February 1966)

- (2) *A person who does anything contemplated in subsection (1), is jointly and severally liable with any other such person for liabilities created as provided for in the contract while so acting if-*
- (a) the contemplated entity is not subsequently registered; or*
  - (b) after being registered, the company rejects any part of such an agreement or action.*
- (3) *If, after its registration, a Company enters into an agreement on the same terms as, or in substitution for, an agreement contemplated in subsection (1), the liability of a person under subsection (2), in respect of the substituted agreement is discharged.*
- (4) *Within 3 months after the date of which a Company was registered the board of that Company may completely, partially or conditionally ratify or reject any contract or other action purported to have been made or done in the name or on its behalf, as contemplated in subsection (1).*
- (5) *If, within 3 months after the date on which a Company was registered, the board of that Company has neither ratified nor rejected a particular contract, or other action purported to have been made or done in the name of the Company, or on its behalf, as contemplated in subsection (1), the Company will be regarded to have ratified that agreement or action.*

22. The principal thrust of section 73 are:<sup>7</sup>

- (i) To enable pre-incorporation contracts to which it applies to be ratified by a company formed after the contract was entered into;*
- (ii) To impose statutory liability upon a promoter to compensate a third party where a contract to which [s 73] applies is not ratified;*

23. After reviewing the pleadings, and the evidence, it is difficult for the Court to elicit how section 73 would apply, in the circumstance. No evidence was

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<sup>7</sup> paragraphs [15.270]-Ford, Austin and Ramsay **FORD'S PRINCIPLES OF CORPORATIONS LAW**, LexisNexis Butterworths, Australia (2015), p 994-5

provided that at the time the agreement was negotiated by Mr Naik, that he was doing so as an 'agent' or 'trustee' of the Plaintiff, with the intent to create legal relations leading to an enforceable contract binding the Plaintiff, once it was incorporated.

*"The contract or the matrix of facts surrounding its making must show that the agent or trustee manifest an intention to contract for the company"*

*Some adequate description of the company must appear at the time of contracting in order to enable a future registered company to be reasonably identifiable as the company; Commissioner of State Revenue v Viewbank Properties Pty Ltd (2004) 55 ATR 501.*

*The requirement of identifiability poses the question of what type of company had to be contemplated when the contract was made."*<sup>8</sup>

24. The verbal agreement that Mr Naik and the Defendant entered into, before the Plaintiff was incorporated, could not be categorized as a valid pre-incorporation agreement, ratified by the Plaintiff, for example, by way of an agreement reached with the Defendant, on the same terms, after it was incorporated, *nor*, is there any pleading disclosed alleging that the pre-incorporation agreement negotiated by Mr Naik, was ratified by the Plaintiff, after it was incorporated.
25. The singular difficulty that the Court found in dealing with the Plaintiff's case is the manner it plead and prosecuted its case. Its pleadings did not reflect an adequate grasp of issues pertinent to the formation, promotion and establishment of a corporate entity, by registration, and in particular which persons, officers or agents has authority (actual or apparent) to act for a company. Further, there is `a clear disassociation between the position pleaded by the Plaintiff with the evidence it adduced at hearing.

### **G. Preliminary Findings**

26. The preliminary findings reached by the Court, on the evidence are;
  - (i) The oral agreement reached by Mr Naik with the Defendant was done in his personal capacity, without "apparent authority" from the Plaintiff.

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<sup>8</sup> Paragraph [15.280] Ford, Austin and Ramsay, p 995



- (ii) After the registration of the Plaintiff on 8<sup>th</sup> March 2016, there is no evidence of it ratifying the pre-incorporation agreement, negotiated by Mr Naik.
- (iii) On the balance of probabilities, the corporate and financial structure of the Plaintiff, subsequent to incorporation, supports the construction preferred by the Defendant, in particular that Mr Naik and Mr Lal became Directors of the Plaintiff and had 50% shares each in the company and were to share equally in the returns of the company, after all expenses were settled by the Plaintiff.
27. The Court finds, on the balance of probabilities, that Mr Naik, the foreign investor, would be the sole finance provider of \$100,000, to fund the poultry farming project in partnership with Mr Lal, an enterprising local farmer, with a proven record of success in farming, who would, provide adequate land for the project, a business plan and management responsibility. The asymmetrical balance in relationship is atypical of investment relationships where funds are sourced from offshore to be invested on locally owned resource.
28. Documents issued by **Investment Fiji**, affirm that the Plaintiff was designated as a foreign investor on the basis that it would be solely responsible for the investment funds.<sup>9</sup>
29. Conversely, the Court does not find, on the balance of probabilities, that the position alleged by the Plaintiff, that the Defendant had agreed to provide an equal amount of \$50,000 , as credible, rather, this would have lead to a marked imbalance in the investment relationship, to the detriment of the Defendant, given the resources and the local experience he brought into the investment, adequate land, farming experience with an established farm , a business plan and connection to a reputable supplier of poultry breeding stock.
30. Consequently, the Court finds that the Defendant did not have any responsibility to provide funds to invest in the poultry farm, given the resources he was providing for its establishment.

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<sup>9</sup> Annexure A1 and A2

31. The Court does not accept the position of the Plaintiff that the Defendant had agreed to transfer the land he owned at Lomaivuna to the Plaintiff, as credible, given that the land which was used for the poultry farm constituted a limited portion (1000 sqm) only, of the total lease holding owned by the Defendant (10a.1r. 08p).<sup>10</sup> This position is not credible as the Defendant, is a successful farmer with a substantial ginger and dalo farm established on it and with a plan to start his own poultry business, so it is difficult for the Court to see how the Defendant, could agree to give away land, as claimed.

#### H. Dissension

32. As found by the Court, the Plaintiff commenced poultry farming operation in 2017, continuing until 2019. Both Mr Naik, and the Defendant, as Directors of the Plaintiff company, were to receive equal returns, after expenses were accounted for.

33. According to the evidence provided <sup>11</sup> however, there was a marked imbalance in the returns payable to the parties, after 2017, the first year of operation.

Year	NAIK	LAL	Total
2017	24,429.30	24,200.00	50,629.30
2018	29,479.35	6,900.00	36,379.35
2019	23,000.00	3,000.00	26,000.00
<b>Total</b>	<b>78,908.65</b>	<b>34,100.00</b>	<b>113,008.65</b>

34. The Court does not find that there was significant dispute about the disparity in returns for the duration of the Plaintiff's operation under the initial partnership arrangement.

35. Dissension arose between the parties over the issue of Directors remuneration although when this surfaced in the relationship, is not clear,<sup>12</sup> other than after the

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<sup>10</sup> 40,000 sqm approximately

<sup>12</sup> Annexure B5-B7

Plaintiff was incorporated and commenced operation. On balance, it appears dissension arose concurrently with the operation of the poultry farm, leading to the Defendant activating his original business plan for establishing and managing his own poultry business, *whilst* at the same time managing the poultry business jointly owned with the Plaintiff.

36. This option was possible because both farms were located on his agricultural holding at Lomaivuna and the Defendant had acquired direct experience in poultry farming, further, as a farmer, he had access to loan finance from the Fiji Development Bank, which he utilized to obtain funds, after registering a new business entity, Lomaivuna Poultry Farm in September 2017,<sup>13</sup>with production commencing in 2018.
37. The establishment of the new farm did not affect the Plaintiff's operations given it was only located on a limited area, (1000 sqm) of the Defendant's landholding, however, Mr Naik as a Director, opted to discontinue the Plaintiff's operations by dismantling the shed constructed on the Defendant's land, and relocating it to a separate leasehold property at Lot 24. Plan R1869 in Lomaivuna, once the Defendant commenced his poultry farming operation
38. The nature of the evidence placed before the Court by the parties on the breakdown of relationship between the Plaintiff and the Defendant, differed from that provided by the parties on the initial agreement.
39. A written Agreement dated 31<sup>st</sup> October 2018<sup>14</sup>, was signed by the Plaintiff, with the Defendant after their relationship had broken down, affirming that it would bear demolition costs of the shed from the Defendant's land and its construction at a site acquired by the Plaintiff on Lot 24, Plan R1869, Lomaivuna.
40. A term of the Agreement, affirmed that the Plaintiff would continue payments of a company vehicle Reg No IP 172, owed to Credit Corporation Ltd, until the demolition of its shed was complete, with the Defendant taking over payments after, and that ownership of the vehicle would be transferred to the Defendant,

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<sup>13</sup> Annexure B8

<sup>14</sup> Annexure 19 (Exhibit DF 1) in Documents-Schedule One of Law Solutions.

once the payments were completed. Despite the balance being paid off, the said vehicle registration has not been transferred to the Defendant.<sup>15</sup>

41. Mr Naik appears to assume that the evidence on the relationship breakdown between the Plaintiff company and the Defendant could be construed as breach of the pre-incorporation agreement, without any evidence provided that the Plaintiff had ratified the terms of that oral agreement, after it was incorporated, or direct the Court to any pleading to support this outcome.

### **I. Loss and Damages for Relocating Shed**

42. There is no basis, on the evidence, to justify the claim for loss and damages for relocation, as the written Agreement dated 31<sup>st</sup> October 2018, under seal, unequivocally states that Ruhi Investment Pte Ltd, the Plaintiff, would demolish the chicken shed and reconstruct it on a property to be purchased and that all costs would be borne by it. There is no dispute on the evidence about the terms of this Agreement.

### **J. Fraudulent Misrepresentation**

43. In the submissions filed on 13<sup>th</sup> August 2024 the Plaintiff relies heavily on the allegation of fraudulent representation. These submissions affirm the lack of rigor in the Plaintiff's application of the principles of incorporation and evidence, with the Plaintiff asserting that;
- (i) The Defendant had, agreed and fraudulently represented that if the Plaintiff invest \$100,000 he will transfer the said property and did not do so.
  - (ii) The Defendant went behind the Plaintiff's back and acquired a loan from FDB over the same piece of land and built his own shed, after which he harrassed the Plaintiff to move out of the property and thereby incurred a loss of \$60,000, for relocation.

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<sup>15</sup> Annexure B11 and B12

44. These submissions illustrates the disjunctive approach discharged by the Plaintiff in the prosecution of its claim. There is no attempt to address the issue of pre-incorporation agreements `and how they can be ratified, nor is there any attempt to reconcile its submissions with direct evidence provided in the written agreement of 31<sup>st</sup> October 2018, signed by the Plaintiff, whose terms negate the claim for fraudulent misrepresentation, and indeed, breach of contract, alleged by the Plaintiff..

#### **K. Conclusion**

45. The Court finds therefore on all the issues identified in paragraphs 7(i)-(iv) herein against the Defendant and as raised in the Statement of Claim filed on 22<sup>nd</sup> September 2020 ,that;
- (i) there was no agreement reached with Ruhi Investment Pte Ltd that the Defendant, Ravin Prakash Lal would invest the sum of \$50,000.00 as investment for the business, and there could be no basis for alleging breach of such an obligation.
  - (ii) there was no agreement reached with Ruhi Investment Pte Ltd that the Defendant would transfer the land to it, and there could be no basis for alleging breach of such an obligation.
  - (iii) no general or specific loss or damages have been established as claimed by the Plaintiff for the relocation of its facility from the Defendant's land.
  - (iv) no claim for fraudulent misrepresentation is established
  - (v) the Counter Claim by the Defendant filed in the Statement of Defence and Counter Claim filed on 5<sup>th</sup> November 2020, succeeds, except for the claim for monthly rental for the period the Plaintiff used the Defendant's land.

**FINDINGS:**

1. The Plaintiff's Statement of Claim is dismissed in its entirety.
2. The Defendant's Counter-Claim succeeds except for the claim for monthly rental for the period the Plaintiff used the Defendant's land.
3. Costs to the Defendant to be paid by the Plaintiff within 21 days of this Ruling, summarily assessed at \$1,500.00



*Savenaca Banuve*  
Savenaca Banuve  
Judge

At Suva  
04<sup>th</sup> October, 2024.