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

CIVIL ACTION NO. HBC 20 of 2019.

BETWEEN	**:**	**VIJAY SINGH**
		PLAINTIFF
AND	**:**	**ITAUKEI LAND TRUST BOARD**
		DEFENDANT
BEFORE	:	Hon. Mr. Justice Mohamed Mackie
APPEARANCES	:	Ms. Ravai S. for the Plaintiff.
	:	Mr. Kati.J & Mr. Ratule K. with Ms. Nauwakarawa K. for the Defendant.
DATE OF TRIAL	:	24th & 25 April 2023 and 3rd & 4th August 2023.
WRITTEN SUBMISSIONS:		Filed by the Plaintiff on 20th November 2023. Filed by the Defendant on 25th April 2024.
DATE OF JUDGMENT	:	3rd October 2024.

JUDGMENT

A. INTRODUCTION:

1. The Plaintiff, VIJAY SINGH, by his Statement of Claim (SOC) filed on 1st February 2019 prayed for the following reliefs against the Defendant, ITAUKEI LAND TRUST BOARD;

    i. *Judgment for Damages for breach of agreement for special and loss/general damages.*

    ii. Interest at 10% on the Judgment sum per year until the full amount is paid to the Plaintiff.

    iii. Costs on indemnity basis.

2. Having filed its acknowledgment of service on 14th February 2019, the Defendant filed its Statement of Defence (SOD) on 05th March 2019 moving for the dismissal of the plaintiff's action, together with an order for costs on indemnity basis.

B. HISTORY IN BRIEF:

3. **In his SOC , the plaintiff, *inter alia*, states THAT:**

a. He and the Defendant, on 26th August 2014, entered into an "Agreement for Lease" in respect of the land described in Agreement for Lease TLTB No- 4/7/40183 in Nasauya Lot 1 in the Tikina of Vuda in the province of BA having an area of 3.1559 hectares ("Lease").

b. The said lease was for the purpose of development as residential leases by sub-dividing and selling the lots, for which the defendant had consented.

c. Relying on the said Lease, he commenced development works, such as hiring the Contractors, Surveyors and Engineers to clean the land, to level it by depositing top soil, to prepare scheme plan, to sub-divide & do the pegging of single lots, for marking of internal roads & drains, and for obtaining approval from Town & Country planning office.

d. During the development stage, the Defendant gave its consent for him to continue and finalize the development of the lease.

e. On 30th August 2018, he was informed by the Defendant that it was cancelling the said lease as the land described therein had already been leased to a landowning unit referred to as Mataqali, which act is called and known as "double leasing". At the time of obtaining the lease and developing the land, he was not notified by the Defendant that the said land has been or would be alienated to a third party.

f. By letter dated 7th December 2018, sent by his Solicitors, notified the Defendant that he was treating the said alienation as a breach and repudiation of the Agreement by the Defendant.

g. As a result, he has suffered special damages such as, Survey Cost $27,000.00, Town & Country Planning Fees $ 5,142.00, Travelling & Incidental Expenses $ 6,500.00, Cleaning, Maintenance & Physical development of the land at the cost of $21,000.00, Deposit with the Defendant $ 6,000.00, and payment for the consent of the Defendant for the Survey fees $450.00.

h. He also claims general damages in a sum of $ 3,060,000.00, excluding the expected development costs of $990.000.00 from the total intended sale value of 27 lots at the rate of $150,000.00 per lot. **(27 Lots x$150,000.00 = $4,050,000.00 - $990,000.00= $ 3, 60,000.00**.

4. In its Statement of Defence, the Defendant, inter alia, pleaded the following;

i. The Plaintiff was offered the lease by the Defendant,
ii. The Defendant never gave the Plaintiff any consent and/ or assurance for the Plaintiff to commence and finalize development,

iii. The Plaintiff commenced the development works without the Defendant's consent and did so to his own detriment.

C. PRE-TRIAL CONFERENCE (PTC) MINUTES:

5. The followings were the Agreed facts and issues recorded, as per the PTC minutes filed on 5th March 2020.

AGREED FACTS

1. *The Plaintiff and the Defendant entered into an agreement being Agreement for Lease TLTB Reference No: 4/7/40183 for a period of ten (10) years with effect from 1st January 2014.*

2. *The Defendant was at all material times the Lessor of Agreement for Lease TLTB Reference No: 4/7/40183 in Nasauya Lot 1 in the Tikina of Vuda in the Province of Ba, having an area of 3.1559 hectares.*

3. *The Plaintiff wrote to the Defendant on 7th December 2018 notifying the Defendant that he was treating the cancellation of the Agreement for Lease as a repudiation of the Agreement by the Defendant.*

AGREED ISSUES

4. *Whether Agreement for Lease TLTB Reference No: 4/7/40183 issued to the Plaintiff was for the purpose of development of residential leases?*

5. *Whether the Plaintiff intended to sub-divide the said land and sell?*

6. *Whether the Defendant consented to the Plaintiff's development?*

7. *Whether the Plaintiff paid the Defendant a deposit of $6,000.00?*

8. *Whether in relying on the said Agreement for Lease the Plaintiff commenced Development works on the said land?*

9. *Whether the Defendant gave its consent for the Plaintiff to commence and finalize the development of the said land?*

10. *Without the consent of the Defendant, whether the Plaintiff continued to finalize the development of the subject land at his own risk and detriment?*

11. *Whether the Defendant breached the agreement made with the Plaintiff when it cancelled the said lease on 30th August 2018.*

12. *Whether the cancellation of the said Agreement for lease was due to the said subject land already being leased to a landowning unit referred to as Mataqali?*

13. *Whether the Defendant notified the Plaintiff upon issuing him the said Agreement for Lease that the said subject land has already been or would be alienated to a third party?*

14. *Whether the Plaintiff has suffered Special and General Damages as a result of the cancellation of the said Agreement for Lease by the Defendant?*

15. *Whether the Plaintiff is entitled to Special and General Damages as pleaded in his Statement of Claim?*

16. *Costs to the successful Party and whether on a solicitor client indemnity basis.*

D. THE TRIAL:

6. At the trial held before me for 4 days, the Plaintiff, **Vijay Singh (PW-1)** gave evidence on his behalf by marking documents Nos 2, 3, 1, 18, 6, 19, 20, 21, 9, 5, 16 & 13 from his bundle as "**Pex- 1" to "Pex 12"** respectively**.** Thereafter, his witnesses **Vipul Romic Sharma (PW-2)**, **Vinend Naidu (PW-3), Nimilote Fifita (PW-4)** and **Seremaia Vueti (PW-5)** gave evidence. Out of the rest of the documents, the document no- 1 was marked through **"PW-2"** as "**Pex-13",** Documents No- 3, 4, 8, 14, 22, 23, 24 & 27 were marked through **"PW 4"** as "**Pex-14"** to "**Pex 22"** respectively and finally the document No-26 was marked through **"PW-5"** as "**Pex-23"**.

7. On behalf of the Defendant, 3 witnesses were called and one document was marked as **"Dex-1"** through **"DW-2",** while 4 other documents were marked as **"Dex-2"** to **"Dex-5**" through **"DW-3".** Both parties have filed their respective written submissions as stated above and I am thankful to the learned counsel for both parties for the same.

E. EVIDENCE :

8. The Plaintiff (**PW-1**) in his evidence confirmed; that he was offered a development lease by the Defendant Board sometimes in 2013 or early 2014, and entered into the Agreement dated 26th August 2014 marked as **"Pex-1"** and the lease was for the development purpose of the land described in TLTB Lease No- 4/7/40183 for a period of 10 years. Accordingly, with the intention of developing it by sub-dividing into 27 lots, with the consent of the Defendant Board, he hired contractors to clean and level the land, a Surveyor to survey, demarcate the boundaries and to sub divide it into 27 lots. He also added that initially, as per the advice of the Surveyor, he decided to subdivide only 10 lots before proceeding to develop the remaining land into 17 lots in the second phase of development, for which the Director of Town & Country planning had approved the initial plan in principle subject to conditions.

That in order to facilitate the survey and pegging of the lots, hired Contractors for the cleaning, leveling by filling the land with top deposits and part of the works were done by his company as well in terms of bulldozing etc. That prior to this, he also had paid $6000.00 to the Defendant Board as per the offer letter being the initial deposit. However, during the said initial process he was confronted by the landowners demanding to stop the works on the land in question. Accordingly, he raised this issue with the Defendant Board, who wanted the offer letter to be returned and they never returned it back.

That his purpose of the Development Lease was to create high class residential blocks for the community of "Saweni" as it looked lucrative for him and hired SEA LAND FIX CONSULTANTS to do the survey, to get the approval of the relevant departments and to obtain the consent of the Defendant Board, who consented to the development. He testified further, that on 30th August 2018 his Lease was cancelled by the Defendant Board citing the reason that the land had already been leased to someone else. Accordingly, he through his Solicitors sent the letter dated 7th December 2018 notifying them of the breach of contract on the Defendant's part. He added that as a result, he suffered special damages as averred in the SOC and general damages in a sum of $150,000.00 per lot on account of 27 lots that he intended to develop and sell.

F. <u>ANALYSIS:</u>

9. I will not reproduce here the Plaintiff's evidence under cross examination, the evidence of his other witnesses or that of the Defendant's witnesses, except for reproducing the vital parts thereof, if needed, since the paramount consideration here should be the legal framework in relation to the issuance of Agreement for Lease, before going into the merits of the claim advanced by the Plaintiff.

10. For the Plaintiff to succeed in his claim against the Defendant, the burden is squarely on the Plaintiff to prove that he entered into an **enforceable** Agreement for Lease with the Defendant Board to lease the subject land for his intended purpose, that he duly adhered to and fulfilled the obligations on his part, and it is none other than the Defendant Board, who breached the Agreement for Lease and / or caused him damages as alleged by him.

11. It is to be noted that the Plaintiff in his SOC, except for averring that there was an Agreement to Lease entered into between him and the Defendant Board, neither pleaded that there was a legally **enforceable Agreement** for Lease between him and the Defendant nor raised an issue to that effect in the PTC minutes.

12. Even in the prayers to the SOC, the Plaintiff has failed to include a paragraph praying for an Order or a Declaration to the effect that the Agreement in question has been breached or violated by the Defendant Board, which would support the Plaintiff's substantial claim for damages, particularly, the general damages. In my view, such a finding is a pre-requisite for the relief of damages to awarded, if the Plaintiff is entitled thereto.

13. The reason for not moving for such a finding, in my view, is that the Plaintiff knew very well that there was no such an enforceable Agreement for Lease between him and the Defendant Board as the land meant to be the subject matter thereof had already become the subject matter of a previous Agreement for Lease. What the Plaintiff claims through this action is the special damages on account of the expenses he claims to have incurred so far on the development works, and general damages in lieu of profits that he would have earned out of the intended project, had it proceeded in the manner he had planned.

14. The Defendant, having formally informed the Plaintiff about the "Double Leasing" for the first time by its letter dated d 30th August 2018 (Pex-6), chose to raise this issue before this Court for the first time only through its written submissions. However, prior to going into the merits of the Plaintiff's claim for damages, this Court cannot be precluded from considering the propriety of this Defence, even though it is belated , as it goes to the legality of the Agreement to Lease and root of the Plaintiff's action.

15. If the Defense of "Double Leasing" advanced on behalf of the Defendant succeeds, which is supported by the paragraph B-2 of the SECOND SCHEDULE to the Agreement for Lease (Pex-1), the necessity to answer most of the issues may not arise, except for answering issues on the question of special damages claimed by the Plaintiff, provided he is entitled thereto.

16. The fact that the subject matter land, for which the Plaintiff entered into the "Pex-1" Agreement for Lease with the Defendant on 26th of August 2014, had already become the subject matter of an earlier Agreement for Lease dated 28th February 2006 marked as "Dex-2", is not disputed by the Plaintiff. The Plaintiff, in paragraph 5 of his letter sent to the Defendant through his Solicitors (marked as "Pex-8"), has accepted the position that his Agreement for Lease has been terminated on account of double leasing. This may be the reason, the Plaintiff did not pray for an order on the propriety of the impugned Agreement for Lease.

17. Further, the evidence of the Defendant's witness (Kirisitiana Volivoli), to the effect that there was a double leasing affecting the land in question and an Agreement had already been entered into prior to the Plaintiff's Agreement , has remained unchallenged. The Plaintiff being a Lawyer by profession should have been aware of the contents of paragraph B-2 of the SECOND SCHEDULE to his Lease Agreement marked "Pex-1", which forewarns him that the subject matter land of his Agreement for Lease could, probably, be a subject of a previous lease.

18. The simple logic here, as provided by paragraph B -2 of the SECOND SCHEDULE to the Agreement for Lease, is that when the Plaintiff signed his "Pex-1" Agreement for Lease with the Defendant on 26th August 2014, the land in question could not have become the subject matter of the said Agreement as it had already become the subject of an earlier Agreement entered into on 28th of February 2006 marked as "Dex-2" well before 8 years and 6 months. This is an undisputed fact. In other words, in the absence of the subject matter land, no valid and enforceable Agreement could have been entered into, and if entered into, it could be void ab initio.

19. In **Wati v Native Land Trust Board [2008] FJHC 190; Civil Appeal 002.2008 (2 September 2008)** Justice Jiten Singh , inter alia, stated as follows;

> *"However, that is not the end of the matter here. The basis of plaintiff's action is negligence in that the NLTB having earlier granted a lease to another person over the same land, then proceeded to grant a lease to the plaintiff over the same piece of land. While that is clearly*

negligent because it shows the defendant had not checked its records, but it nevertheless raises the issue – what did the plaintiff get? How can there be two concurrent leases to two different persons? The Magistrate's Court was not told what was the term of lease over the same law issued to Isireli Tamani Tuiwawa.

However Tuiwawa had acquired an interest in the land. Once an interest in the land or chattels is effectively acquired, the right of property can only be lost by some unequivocal act of alienation by the lessee or forfeiture by the owner. Hence the NLTB could pass no interest in the land to the plaintiff as long as the interest of Tuiwawa subsisted. In view of that the market value of lease to the plaintiff was nil".

20. When the Plaintiff had signed the said Agreement for Lease with the Defendant on 26th August 2014, the intended subject matter land thereof, being the subject of the former Lease Agreement granted to REIJELI VUNIYAYAWA in the year 2006, and when the former Lease Agreement had remained intact with no disposition or alienation of the subject Land by the said REIJELI, neither the Defendant could have passed or agreed to pass any right, title or interest in that land unto the Plaintiff nor the Plaintiff could have derived any title or interest through the "Pex-1" Agreement to Lease. The paragraph B-2 of the SECOND SCHEDULE to the Agreement for Lease operates as a "Safety Valve" in order to protect the Defendant Board from the predicament of "Double Leasing" which effectively stops the passing of such right, title or interest in the subject land to any other party while a previous Agreement for Lease or a Lease remains intact.

21. In view of the above, I would say that there was no an enforceable Agreement entered into on 26th August 2014 between the Plaintiff and the Defendant, in the absence of a subject matter land. It means that the Plaintiff's "Pex-1" Agreement for Lease could not have been put into action or enforced in order to materialize the purposes intended therein. Accordingly, this Court can safely conclude that there could not have been a breach of Agreement for it to be considered as repudiation by the Defendant Board as alleged by the Plaintiff.

22. Accordingly, the issue No. 12 hereof, which is the pivotal issue, should attract an affirmative answer in favor of the Defendant. The issue No-13 in this regard is somewhat vague. The reason being that had the Defendant notified the Plaintiff upon signing the Agreement for Lease that the land in question had already been or would be alienated to a third party as suggested by this issue, the Plaintiff **would not have** taken the risk of entering into and/ or continuing with the impugned Agreement for Lease or acted upon it.

G. CLAIM FOR DAMAGES:
General Damages:

23. Having arrived at the above findings on the unenforceability of the Plaintiff's Agreement for Lease, what comes next for consideration is whether the Plaintiff can claim for general damages as averred and prayed for in his SOC. The Plaintiff, at the time of sending his letter of Demand marked as "Pex-8" on 7th December 2018 and when filing of this action on 1st

February 2019 knew or should have known very well that he could not have implemented the project and attained his target of profit out of it, for which the required land had not been provided for in his Agreement for Lease as double leasing had taken place. The claim for general damages is only an imaginary one and would not have become a reality in the absence of the required land for the project. His intention was to sell 27 lots at the rate of $150,000.00 per lot and earn $ 3, 60,000.00 minus the estimated total development costs of $990.000.00, as per the calculation shown in paragraph (3) (h) above.

24. The Plaintiff should have been aware from the time he was obstructed by the Land owning unit when he was cleaning the land and brought the obstruction to the notice of the Defendant that he was not going to get the title for the land in question and in the absence of the land, his project was not going to be implemented to earn his intended profit out of it. The Plaintiff, being a Lawyer by profession as aforesaid, the paragraph B-2 of the SECOND SCHEDULE to his Agreement to Lease and its effect could not have escaped his attention. He should have been self-advised in his proposed venture.

25. It is alleged that the Plaintiff has failed to request for the relaxation of the conditions in relation to the scheme plan and to request for the extension of time for it, which had expired. If the Defendant's position was that there was an issue of double leasing affecting the land in question, no purpose would have been served in relaxation of conditions, extension of time and/ or granting consent for development. However, the facts remain that the Plaintiff has commenced and proceeded with the initial works like cleaning, levelling, surveying and getting the scheme plan conditionally approved with the implied consent from the Defendant, who gave the instructions for Survey as per "Pex-8" and did the follow ups with the Surveyors concerned.

26. I need not go into the details of the, purported, valuation reports in view of the above observations, according to which the chances of obtaining general damages is very remote. However, the Court is not inclined to accept and act upon the evidence of the Plaintiff's witness, the Registered Valuer , particularly, for the reason that the said Valuation is not based on what he had seen at the site, but based on what he heard from the Plaintiff.

27. For the reason stated above, the Plaintiff could not have made a demand from the Defendant for general damages and claimed the same through this action from the Defendant. The Plaintiff's intended development works and earning of profits out of it were confined only to the activities like cleaning, levelling the land, surveying a part of it and applying for the approval of the Plan. He had zero prospect of getting the land in question for his intended development project. Thus, the Plaintiff's claim for general damages should necessarily fail and has to be dismissed. The Plaintiff could not have capitalized on an Agreement for Lease, which did not provide him a land for him to develop and earn profit as he intended. His claim for general damages is misconceived, frivolous and does not deserve any favorable consideration.

28. For the reason stated above, the Plaintiff could not have made a demand from the Defendant for general damages and claimed the same through this action. The Defendant could not have proceeded with the substantial activates for development in the absence of land allocated for the same. Thus, the Plaintiff's claim for general damages should necessarily fail and has to be dismissed.

Special Damages.

29. Apart from the general damages , the Plaintiff claims for special damages in a total sum of $66,092.00 as particularized in paragraph 8 of the SOC and in paragraph 3 (g) of this judgment. The Defendant is disputing the Plaintiff's claim for special damages by citing the reasons that the Plaintiff had not obtained the consent for the development works and did not prove such expenses by producing relevant receipts.

30. This kind of damages have to be specifically particularized, pleaded and proved at the trial. Before going into the particulars of it, let me consider whether the Plaintiff is entitled to recover as special damages any of the expenses that he claims to have incurred, under the given circumstances in this matter.

31. It was only through the Defendant's letter dated 30th August 2018, the Plaintiff was formally informed about the Double Leasing and requested the Plaintiff to surrender the original of the Agreement for Lease for cancellation. Careful consideration of the total evidence led clearly demonstrates that in the absence of any formal notification about the "double leasing" and owing to the admitted delay on the part of the Defendant in giving such notice (as per the said letter), the Plaintiff has continued to do required initial works for the project by spending money on cleaning, filling, levelling and preparation of Plans for the purpose. It is in the above backdrop, the claim for special damages have to be considered.

32. When the Defendant was notified by the Plaintiff about the obstruction caused to him by a member of the Land Owning Unit (probably the party to whom the former lease was issued), the Defendant was duty-bound to inquire into it and promptly inform the Plaintiff to stop all the works related to this Land and the Agreement for Lease entered into with him. As per the Agreement, the Plaintiff was expected to engage a Surveyor and furnish evidence of such engagement within 3 months' time. This being duly done, the Defendant has issued the Survey instructions as evidence by the "Pex-5".

33. The Plaintiff's Tax Invoice No 4420 dated 20th March 2014, marked as "Pex-2", suggests that the Plaintiff had commenced cleaning works in the Land even before the Agreement was signed. The "Pex-14" dated 23rd September 2014, which was marked with no objection, shows the quotation obtained by the Plaintiff for the Survey the periphery , while the "Pex-9" receipt dated 24th September 2014 substantiates the payment of $2,946.00 being the 50% of the such fees.

34. Undoubtedly, by 24th July 2015, the Defendant was aware of or should have been aware of the "Double Leasing" in relation to the land in this action. However, the Defendant, vide its letter dated 24th July 2015 marked as "Pex-16" writes to the Surveyors Messrs. **Sea Land Fix Consultants** inquiring about the progress of the Survey of the Lease to Mr. Vijay Singh, the Plaintiff. Further, by the letter dated 10th August 2015 marked as "Pex-10" , the office of the "Town and Country Planning" (TCP) writes to the Surveyors SEALANDFIX advising that the Sub-division has been conditionally approved. Then, by letter dated 5th March 2016 marked as "Pex-12" the SEALANDFIX writes to the Director TCP for the relaxation of condition 12 for approval.

35. On top of the above, the Defendant by its letter dated 9th June 2017 marked as "Pex-17" writes to the SEALANDFIX by enclosing the Survey Plan for the approval by the Director of land and and the Surveyor General , and requesting re-submission after approval in order to proceed with the preparation of Lease documents to the Plaintiff. In addition to above, the Plaintiff by 18th July 2017 as substantiated by "Pex-18" manages to obtain the "Certificate of Land Sub-division" from the "Lautoka Rural Local Authority".

36. All the above evidence clearly demonstrate that the Plaintiff, with the legitimate expectation that he would get the subject matter land for his intended project, has continued to spend money on the initial works such as cleaning , levelling , causing the Survey, the sub-division of lots and obtained the conditional approval for the same. These exercises by the Plaintiff and the aforesaid communication between the Defendant and the SEALANDFIX have not been denied by the Defence Counsel.

37. It is observed that , had the Defendant promptly and duly informed the Plaintiff about the issue of "Double Leasing" and desisted from giving hopes to the Plaintiff about the Land in question, particularly, by not sending letters marked as "Pex-16" and "Pex-17" to the "SEALANDFIX", the Plaintiff would not have taken risk of spending money at the preliminary stage of the project for cleaning, levelling, Survey, preparation of Technical Specifications and Sub-divisions Plan, which in my view assist the Plaintiff in substantiating his claim for special damages.

38. It was only by the "Pex-6" letter dated 30th August 2018 addressed to the Plaintiff, the Defendant had officially informed the Plaintiff that the land in question is a subject of a former Lease Agreement marked as "Dex-2". Apart from this letter, there was no any other official communication to the Plaintiff from the Defendant about the said "Double Leasing" despite the Plaintiff had raised the issue with the Defendant at the early stage that he was obstructed when he was engaged in cleaning the land soon after signing the Agreement for lease.

39. It appears that the Defendant, for the reason best known to it, wittingly or unwittingly, allowed the Plaintiff to continue with his works and to spend considerable sum of money on the project as aforesaid. This failure on the part of the Defendant, to promptly and formally inform the Plaintiff that he could not have had this land for his intended project as per the

Agreement, matters to some extent when considering his claim for special damages. By the said failure, the Defendant has, tacitly, induced and allowed the plaintiff to continue to spend, which was not supposed to bring any benefit unto the Plaintiff at the end of the day. Thus, I am of the firm view that the Plaintiff's claim for special damages stands justified.

The amount of Special Damages?

40. With the above finding on the Plaintiff's entitlement for special damages, what remains to be decided is the amount of special damages that should be ordered to be paid. All the receipts and other documentary evidence in proof of such expenses need not, necessarily, warrant the sanction of this Court for payment. Let me consider the propriety of each claim tendered and that of the evidence adduced to substantiate those claims.

a. Survey Costs $ 27,000.00.

41. By the letter dated 23rd September, 2023 marked as "Pex-14" received from the SEALANDFIX, the Surveyors and a sum of $5,893.00 was called as the cost for the Survey of periphery of the land in question. As per the receipt No- 0006428 dated 24th September 2014 and marked as "Pex-9" a sum of 2,946.00, being the 50% in terms of the "Pex-14", has been paid. This was not seriously disputed by the Defendant by cross examining the Plaintiff and the witness PW-4 N.J. Fifita called from the SEALANDFIX, who testified that they were engaged for the Survey and sub division of 27 to 28 lots, their total quote was $28,036.00 as per "Pex-19", duly applied for Survey instructions, obtained conditional approval of the plan from the TCP and the Compliance Certificate from the Rural Authority.

Under cross examination of Mr. Fifita, Counsel for the Defendant has posed the questions with regard to payment of $5, 893.00 by accepting the position that 50% of the said amount had been already paid (Vide page 117). Under further cross examination in page 119, the following question and answer in this regard are worthy of reproduction here.

> ***Q. I put it to you witness the only amount that Mr. Singh has paid you is only $2,946.00 is that correct?***
> ***A. If I wasn't paid, I wouldn't be doing the engineering. I have to get the payment upfront***.

Mr. Fifita, also testified about receiving the Engineering Plan from the TCP and on the payment of $12,376.85 for the same as evidenced by "Pex-20". The main point raise under cross examination on this was the absence of receipts for the same. But the witness insisted that the payment was made on invoices issued. However, this witness under re-examination in
page 127 has accepted that he was not cooperating (with the Plaintiff) from the beginning, because there was still fees to be paid and the Plaintiff still owes them around $13,000.00 or $14,000.00.

However, I find that the communication between the SEALANDFIX and TCP marked as **"Pex-10",** and email correspondence between the ITLTB Northwestern Office and the TCP marked as "Pex-7" demonstrate the extent of role played by the TCP in the process, which justifies the payments to it.

The Plaintiff's bundle of documents also contain a letter dated 7th September 2015 addressed to the Plaintiff quoting a sum of $3,991.40 being the Survey fees, which shows the payment of $1,200.00 out of it. I will disregard it as the plaintiff has not marked and tendered it in his evidence.

The Plaintiff has also marked the letter dated 13th December 2018 as "Pex-19" to substantiate that a total sum of $28,036.00 was already paid as consultancy fees for the sub-division works already done . There is no proper invoice or receipts issued at the relevant times in proof of such payments. This letter seems to have been issued belatedly on the request of the Plaintiff. However, careful perusal of both the **Technical Specification Report marked as "Pex-21**" and the **Plan marked as "Pex-22**" prepared by the SEALANDFIX for the sub divisions of 10 lots (out of the proposed 27 -30 or 31 lots) sufficiently demonstrate that the Plaintiff has paid a substantial amount out of the said sum of $280,036.00 to the Surveyors .

The contents of the Technical Specification Report and the sub-division plan for 10 lots speak for itself, which demonstrate that the preparation of those documents involves substantial costs. This Court stands convinced that the Plaintiff has spent a considerable amount under this heading for which he has claimed only $27,000.00. However, considering the totality of the oral and documentary evidence in this regard, I decide to grant a sum of **$18,000.00**, being the 2/3 (two third) of $27,000.00 claimed by the Plaintiff. In this regard, I have taken into account only the sum of $12,375.85 plus $5,893.00 both of which add up to $18,268.85. However, I decide to allow only $18,000.00, being the nearest round figure.

b. <u>Payment to Town & Country Planning Office ($ 5,142.00).</u>

42. Under this heading, the Plaintiff claims $5,143.00 being the charges paid to TCP office. In proof of part payment of it, a further receipt bearing No- 958495 dated 6th September 2017 for a sum of $ 2,504.50 has been tendered in evidence marked as "Pex-11". This was not disputed by the Defendant. When the magnitude of the project planned by the Plaintiff and the services that could , possibly, have been rendered by the TCP office during such a long time period as disclosed by the other documentary and oral evidence , I am of the view that the sum **$5,142.00** claimed by the Plaintiff should be allowed to be recovered. Accordingly, I decide to allow this claim as it is.

c. <u>Travelling & Incidental expenses- $ 6,500.00.</u>

43. The Plaintiff claims $6,500.00 under this heading. Generally, no receipts and / or invoices are obtained or maintained for these type of expenses. In addition to the fees paid to the

Defendant Board by the Plaintiff (which is admitted in the letter dated 30th August 2018) the Plaintiff has also paid to the Board various other miscellaneous sums as evidenced by the Plaintiff's bundle of document. Accordingly, I decide to allow 2/3 (two third) of this claim, which is **$4,333.00**.

d. <u>Cleaning, maintenance & Physical development of the Land $21,000.00</u>

44. The plaintiff submitted following documentary evidence in this regard;

i. Tax Invoice No-4420 dated 20th March 2014 marked as "Pex-2" for a sum of $6,200.00.
ii. Tax Invoice No-4432 dated 14th Feb 2016 for a sum of $7,400.00.
iii. Tax Invoice No -4444 dated 6th February 2018 marked as "Pex-3" for a sum of $ 7,400.00.

<u>Total $21,000.00</u>

However, the plaintiff has not tendered the 2nd invoice above through his evidence. These expenses were not seriously challenged under cross examination. It is understandable that prior to survey and sub division of such an extent of land, the cleaning and levelling of the land
is a vital requirement. However, I find that only a portion of land, to accommodate initial 10 lots, seem to have been cleaned and levelled. Accordingly, I decide to allow only $8,000.000 under this heading.

e. <u>Deposit with the Defendant for Lease- $ 6, 000.00.</u>

45. The Plaintiff claims to have deposited the said sum with the Defendant Board for the purpose of processing this Agreement for Lease. The Plaintiff has not substantiated this payment. However, the circumstances show that if this amount was not paid, the Defendant would not have proceeded to prepare the Agreement and have it signed. However, as pointed out above, the Defendant in 6th paragraph its letter dated 30th August 2018, has suggested to refund the fees paid. As per my understanding, the Defendant is referring to the deposit of $6,000.00 and not to any other sum paid by the Plaintiff. Accordingly, this sum of **$6,000.00** is allowed to be recovered from the Defendant.

f. <u>For consent by the Defendant for Survey-$4,50.00.</u>

46. No receipt whatsoever has been provided for this payment. But, it is in the evidence that the Defendant, subsequent to the signing of the Agreement for Lease, has proceeded to issue the Surveyor's instructions as per "Pex-8" and continued to inquire about the progress of the Survey and about the approval of the Plan as per "Pex-16" & "Pex-17" and letters dated 24th July 2015 & 9th June 2017 from ITLTB to the Surveyor. However, this payment of $450.00 has not been challenged. In view of the above, Court decide to allow this claim of $450.00 as prayed for.

47. Accordingly, total sum recoverable as special damages is as follows;

a. Survey Costs	$	18,000.00
b. Payment to TCP Office	$	5,142.00
c. Travelling & incidental expenses	$	4,333.00
d. Cleaning & Maintenance	$.	8,000.00
e. Deposit with the Defendant	$	6,000.00
f. Consent fees for Survey	$	450.00
TOTAL	**$**	**41,925.00**

48. Before conclusion, I must also put on record that the Defendant, who allowed the Plaintiff to sign the Agreement for Lease, subsequently issued the instructions for the Survey and followed up the progress as aforesaid. But did not promptly and formally inform the Plaintiff about the Double Leasing until 30th August 2018. Thus, the Defendant cannot at this stage take up a Defence that the Defendant had not obtained the consent.

Costs;

49. Considering the circumstances of this case, I decide that Ordering of a sum of $ 2,000.00 as the summarily assessed cost in favor of the Plaintiff is justifiable.

Answers to the Issues:-

50. In the light of the discussions above, I decide to answer the issues as follows;

a. The issues 4,5,6,7 & 8 are answered affirmatively in favor of the Plaintiff.
b. The issue No-9 is answered to the effect that the Defendant consented to commence the survey.
c. Issue No-10 does not warrant an answer as the issue No-9 has been answered affirmatively.
d. Issue No 11 is answered negatively as there could not have been any breach on the part of the Defendant in the absence of land assigned as the subject matter of the impugned Agreement for Lease.
e. Issue No-12 need not be answered in the light of the answer to issue No-11 above.
f. As far as the issue No-13 is concerned, which is vague, I would say that upon the signing of the Agreement, had the Defendant notified the Plaintiff that the land had already been or would be alienated to a third party, the Plaintiff would not have proceeded with the Agreement for Lease.
g. Issue No-14 is answered in favor of the Plaintiff only to the extent of granting partial relief on his claim for special damages limited to $ 41,975.00.
h. The answer to issue No-14 covers the issue No-15.
i. Issue No-16 is answered in favor of the Plaintiff only to the extent of granting $2,000.00 as summarily assessed costs.

51. For the reasons stated above and in the light of the answers to the issues , this Court decides that the Plaintiff succeeds in his action, partially, only to the extent of recovering $ 41,925.00 as special damages and a sum of $2,000.00 being the summarily assessed costs. Considering the circumstances, the Plaintiff is also awarded interest of 3% on the aforesaid sum of $41,925.00 from the date of filing this action till the total sum is fully paid and settled.

H. <u>FINAL ORDERS:</u>

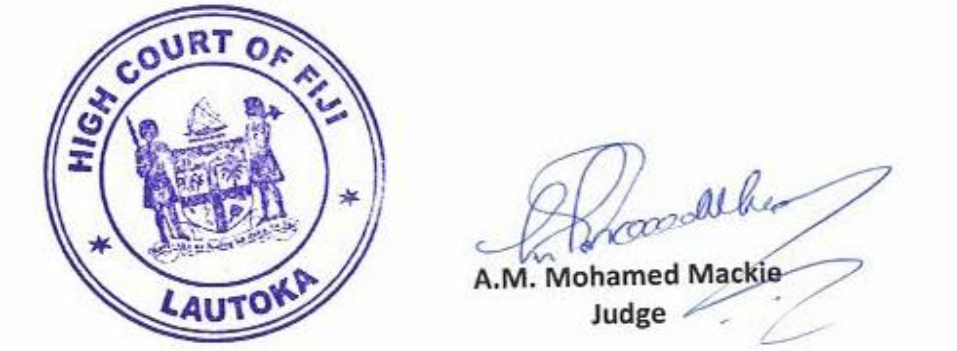
A. The Plaintiff's action, partially, succeeds.

B. The Plaintiff's claim for general damages fails and the same is hereby dismissed.

C. However, the Plaintiff shall be entitled to special damages in a sum of $41,925.00 from and out of the sum pleaded in paragraph 8 of the Statement of Claim.

D. The Plaintiff is also entitled for interest on the said sum at the rate of 3% from the date of filing this action till the total sum is fully paid and settled.

E. The Defendant shall pay the Plaintiff $2,000.00 being the summarily assessed costs.



At the High Court of Lautoka on this 3rd day of October 2024.

SOLICITORS:
For the Plaintiff: **Messrs. Vijay Naidu & Associate- Barristers & Solicitors**
For the 1st Defendant: **In House Counsel, iTaukei Land Trust Board, Legal Department**