

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA, FIJI
EXERCISING CIVIL JURISDICTION

CIVIL ACTION NO. HBC 01 of 2024

BETWEEN : **AMIT SINGH & KAMLESH LATA SHARMA**, of 11181 -90 Ave, Delta BC, Canada. **PLAINTIFFS**

AND : **MOHAMMED RAIZ & SOBNA LATA**, of Fiji. **DEFENDANTS**

BEFORE : A.M. Mohamed Mackie- J.

COUNSEL : Ms. Begum S.- for the plaintiffs.
Defendants – Absent and unrepresented.

DATE OF HEARING : 9th May 2025 (formal proof)

DATE OF JUDGMENT : 9th September 2025.

JUDGMENT

A. Introduction & Analysis:

1. The Plaintiffs on 10th January 2024 filed their writ of summons, together with the statement of claim, moving for the following reliefs against the Defendants.
 - a. *AN ORDER for the Defendant to pay for all the expenses necessary to rectify the Defects of the Residential house.*
 - b. *AN ORDER for the exemplary / punitive damages against the Defendant for breach of contract as pleaded in paragraphs 1 to 24.*
 - c. *AN ORDER for general damages against the Defendants for breach of contract as pleaded in paragraphs 1 to 24.*
 - d. *Interest.*
2. The writ of Summons and the Statement of Claim were, reportedly, served personally on the first named Defendant on 16th April 2024 at Korovotu, Nadi, and on the second named Defendant on 20th January 2024 at Bavu Village, Nadi.
3. As no acknowledgement of service and/ or statement of defence was filed by the Defendants, the Plaintiffs' Solicitors, having done a search at the registry for the same on 25th June 2024, filed the Summons on 01st October 2024 seeking leave to formally prove

their case against the Defendants. This Summons was supported by the Affidavit sworn by ILATIA SESE (Caretaker).

4. Accordingly, the summons for formal proof hearing being supported ex-parte on 25th November 2024, same was fixed to be heard on 23rd April 2025.
5. In the meantime, on an ex-parte application preferred by the Plaintiff's Solicitors on 01st October 2024, an interim injunction order was issued against both the Defendants restraining them from leaving the jurisdiction of the court. The same order was sealed on 2nd October 2024 and also, reportedly, served on the Defendants as per the affidavit of service filed of record. There was no response even for the same from the Defendants.
6. At the formal proof hearing held on 19th May 2025, the first named Plaintiff gave his oral evidence by marking annexures out of the Plaintiff's bundle of documents tendered at the trial.
7. The claim arises out of an agreement entered into by and between the first named Plaintiff and the first named Defendant via an email correspondence marked as "Pex-1", whereby the First named Defendant agreed to build a house as specified in the said agreement for the Plaintiffs at the expense of a sum of \$80,000.00 to \$ 90,000.00, which amount included the entire costs for materials and the Labour charges.
8. The second named Defendant is made a party to the action on the basis that the money for the construction was remitted by the Plaintiff to the Second named Defendant, who is said to be the wife/ partner of the first named Defendant.
9. The total amount said to have been remitted by the Plaintiffs unto the second named Defendant for this purpose is in a sum of \$ \$108,238.80 pleaded in paragraph 6 of the SOC and as evidenced by the annexures marked as "Pex-2". The time period agreed upon for the completion of the house construction was 3 months.
10. The first named Plaintiff "PW-1", who had come all the way from Canada for the trial, gave his oral evidence by marking annexures from "Pex-1" to "Pex-4" in order to substantiate the averments in the Statement of Claim.
11. The contents of the annexure marked as "Pex-1", which is the agreement both parties entered into in writing, though not strictly formal, are very clear as to what the parties had intended expressly and impliedly and particularly what the Defendants were obliged to perform on their part.
12. In keeping with the obligation on their part, the Plaintiffs have duly remitted monies towards this purpose to the credit of the 2nd Defendant's account in a total sum of over \$108,238.80, which is more than the agreed expenditure for the construction of the house in question.
13. However, the Plaintiffs complain that the Defendants on their part have failed and neglected in fulfilling their obligation by not constructing the house to the standard

- expected of and have left most of the works undone and/ or poorly done utilizing substandard materials contrary to the expressed and implied condition.
14. The Plaintiffs' contention with regard to the poor standard of works and inferior materials utilized have been clearly highlighted in the relevant inspection reports marked as "Pex-3". These details, along with the first Plaintiff's oral evidence, sufficiently demonstrate the plaintiffs' allegation and the claim made against the Defendants.
 15. Though, the writ of summons, together with the Statement of claim, and the interim injunction order issued by this Court were duly served on the Defendants, for the reason best known to them, they have decided not to contest the matter and challenge the evidence adduced by the Plaintiffs as aforesaid. Thus, the claim made by the Plaintiffs against the Defendants remain uncontested.
 16. The Plaintiffs are seeking damages from both the Defendants for breach of the contract and losses suffered.
 17. The HCR, O.13, r.2 allows the Plaintiff to enter judgment for unliquidated claims against the Defendants who have failed to give Notice of Intention to Defend, after the expiry of the prescribed period. Therefore, the Plaintiff summons to enter judgment under Order 13 Rule (2) of the High Court Rules, 1988 ("HCR") against the Defendants should succeed.
 18. The issue, at the formal proof hearing, was whether the Plaintiffs are entitled to seek damages from the Defendants on account of the substandard house they have built on the plaintiffs' land. It is also revealed that the first named Defendant, who was supposed to obtain necessary plan approved by the Local Authority, has not applied for and obtained the relevant approval as he was supposed to.
 19. At the formal proof hearing, the first named Plaintiff gave evidence. He also confirmed the averments in the affidavit sworn on 01st October 2024 filed in support of his summons to enter judgment. As part of documentary evidence, he marked and produced the Agreement and the relevant Remittance Slips. Altogether 22 slips have been marked in evidence as "Pex-2".
 20. The Plaintiffs seem to have fully relied on the Defendants and the agreement marked as "Pex-1" and remitted the money on the belief that the Defendants would honor the agreement by constructing the dwelling house for them to the standard expected of and by having a plan approved by the local authority concerned.
 21. The total amount of money sent by the Plaintiffs unto the second Defendant's name is clearly shown in the remittance slips. The inspection reports are self-explanatory and justifies the claim of the Plaintiffs against the Defendants. Plaintiff's evidence remains unchallenged. His evidence has been straightforward. He appeared to be a truthful witness. I find no reason to disregard his evidence. I, therefore, accept his evidence.

22. There is sufficient evidence to conclude that the Defendants have breached the agreement entered with the Plaintiff. So, I also find that the Plaintiff is entitled to damages for breach of the agreement.

B. Quantum of Damages.

23. My next task is the determination on the quantum of loss and damages the plaintiffs have to endure on account the substandard works done by the Defendants and for the breach of contract.

24. The Site Inspection Report (Structural) prepared by Design & Project Pte Limited dated 8th December 2023 and marked as “Pex-3”, and the Report prepared by Coastal Builders Pte Ltd dated 30th November 2022 and marked as “Pex-4” reveal the defects and inferior works done and the remedial measures to be taken, which appear to be extensive. The Plaintiffs have proved breach of the agreement on the part of the Defendants. Damages for breach of the contract are available, as of right, to the Plaintiff.

25. In *Photo Production Ltd v Securicor Transport Ltd [1980] UKHL 2; [1980] AC 827*, Lord Diplock said at p.849:

“Every failure to perform a primary obligation is a breach of contract. The secondary obligation on the part of the contract-breaker to which it gives rise by implication of the common law is to pay monetary compensation to the other party for loss sustained by him in consequence of the breach...”

26. The basic rule of recovery of compensation in the case of breach of contract is that the non-breaching party is to be put into the position it would have been in had the contract been performed as agreed (See *Golden Strait Corporation v Nippon Yusen Kubishika Kaisha, The Golden Victory [2007] UKHL 12, [2007] Bus LR 997, [2007] 2 WLR691*).

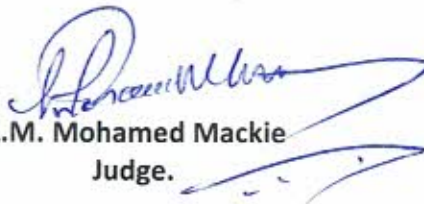
27. The Plaintiffs suffered losses on breach of the contract. The Plaintiff placed trust in the Defendants to build a three -bedroom house on the land owned by the Plaintiff in consideration of the sum of money paid by the Plaintiff. The amount paid was around \$108,000.00. The Plaintiffs had an expectation that the Defendants would construct home for him and his family up to the standard expected of, particularly, when they had paid more than the agreed sum. The house he built was not to the standard expected of and inferior materials had been used for the same.

28. Though, the Plaintiff had the opportunity of overseeing the construction through his son, who was in Fiji or through an independent person, they did not do so. They fully relied on the defendant. The Plaintiff and/ or his family members cannot occupy the same. This is the consequence of breach of the contract and negligence. However, the Plaintiffs have not adduced sufficient evidence in figures to assess the total damages incurred. The Reports marked by the Plaintiffs do not reflect the amount that the Plaintiff will have to incur on account of defective works.

29. Accordingly, having taken all into my account, I decide to assess the damages through a hearing for that purpose. This Court also reserves the option of inspecting the site for the purpose of ascertaining the extent of defects, the substandard works done by the Defendants and for the assessment of the quantum.
30. The Court finds that the Plaintiffs are entitled for loss and damages that they have suffered due to the defective and substandard works done by the Defendants, and on account of breach of contract. There will be a hearing for the assessment of damages.

C. The Result

- A. The Plaintiffs' action succeeds.
- B. The plaintiff is entitled for loss and damages on account of the defective works and breach of contract by the Defendants.
- C. There shall be a hearing on the assessment of the quantum of damages.
- D. There shall also be a site inspection, if needed, for the purpose of the assessment of the extent of the defective works.
- E. The Plaintiffs are entitle to recover from the Defendants a sum of \$3,000.00 (Three Thousand dollars) being the summarily assessed costs incurred so far.
- F. These Orders shall be sealed and served on the Defendants forthwith.
- G. The Plaintiffs also shall file and serve the Summons for the assessment of damages.


A.M. Mohamed Mackie
Judge.



At the High Court of Lautoka on this 29th day of September, 2025.

SOLICITORS:

For the Plaintiff- Respondent: Messrs. ACE LEGAL, Barristers & Solicitors
Defendants absent and unrepresented.