

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 305 of 2017

BETWEEN : **SALESHNI LATA**
Plaintiff

AND : **RAZMI DEVI PAL**
Defendant

Counsel : Mr A Nand for Defendant
Mr S Leweniqila & Mr J Tawake for Defendant

Hearing : 13 December 2024

Judgment : 24 February 2025

JUDGMENT

[1] The Plaintiff and Defendant entered into a sale and purchase agreement in December 2008. The Plaintiff agreed to sell her property to the Defendant in consideration for the payment of \$700,000. The Plaintiff brings this proceeding seeking payment of the unpaid portion of the sale price, being \$450,000.

[2] The Defendant contends that the Plaintiff failed to provide important information regarding the property and counterclaims for \$2.3 million which she says is her loss arising from the Plaintiff's conduct.

Background

[3] The background is taken from the evidence at trial. I have placed no weight on many of the documents in the Defendant's Bundle of Documents as they were not put to the

Plaintiff's witness in cross-examination. There is little consequence flowing from this as much of the information contained in the said documents is, in any event, contained in the Plaintiff's Bundle of Documents.

- [4] The property that is the subject of these proceedings is Certificate of Title number 20797, a piece of land known as Tamavua containing one rood nine perchers and five-tenths of a perch in the District of Suva in the island of Viti Levu and being Lot 14 on deposited plan number 4586 ('the Tamavua property'). The Plaintiff purchased the Tamavua property on 6 June 2006 and appears to have commenced, along with her husband, the development of a five-story building on the land.
- [5] In about December 2008, the parties agreed on the sale of the Tamavua property from the Plaintiff to the Defendant for the amount of \$700,000. It appears that the husbands of the two parties were business associates with some prior familiarity. At the time of the sale, the five-story building was incomplete. According to Mr Sunil Pal, the Defendant's husband¹, the five stories had been constructed but were a shell with no roof and no stairs. The Defendant agreed to take on the completion of the development.
- [6] What also appears to not be in dispute is that the Defendant's company, Inspiron Construction Limited, was owned by the Defendant and her husband. The company organized funding from Dominion Finance Limited ('DFL') for the completion of the development. It secured a loan of \$1,180,000. The parties agreed for R. Patel Lawyers to act for them both in the sale transaction. A deposit of \$250,000 was paid to the Plaintiff for the sale, and the Plaintiff signed a transfer on 18 December 2008, agreeing to transfer the property to the Defendant (the Plaintiff does not dispute that she signed the transfer - and nor did her husband, Mr Sushil Chand.²
- [7] On 23 December 2008, Mr Ramesh Patel, the parties' solicitor, wrote to DFL, confirming his instructions of 17 December 2008. Mr Patel detailed the arrangement between the parties regarding the sale of the Tamavua property and the loan from DFL to Inspiron Construction Limited. The Defendant and her husband were to be guarantors of the loan. DFL was to secure a mortgage over the Tamavua property.

¹ Defence Witness 1.

² Plaintiff Witness 1.

According to the documents produced by the Plaintiff at trial, the transfer to the Defendant was effected on 24 December 2008. At the same time a mortgage was entered in favour of DFL on the Title.

- [8] The Defendant and her husband then got on to the business of completing the construction of the building. They encountered some problems with the construction as evidenced by an email from Mr Pal to Mr Chand on 29 July 2009. It is apparent that their relationship had somewhat soured by this time. Mr. Pal stated:³

We are also having problems with the City Council as your initial plan was lodged for a three-storey building, but the building is on 5 storeys. It is a real hassle for us.

You were paid \$200,000 by the bank. We have spent \$450,000 on that building and can provide the Quantity Surveyor's report to confirm that. We have been affected by devaluation.

We do not have any interest in that building anymore. We took your headache on ours and it has cost us dearly. We have come to a conclusion that we do not want to have anything to do with that building.

Therefore the only solution for this, is that you can pay the bank \$450,000 that we owe and take over the building.

- [9] The relationship between the parties seemed to deteriorate further. Their solicitor, Mr Patel, was brought in to try and resolve the dispute - during this time DFL took steps to organize a mortgagee sale of the Tamavua property. An email from Mr. Patel to Mr. Chand (the Plaintiff's husband) on 7 August 2010 reads:⁴

I know this has been a stressful experience for all and has been brought about because of the delay in completion of the building. The fact that the property has now been put on Mortgagee sale is a positive step and

³ Pg 37 of Plaintiff's Bundle of Documents.

⁴ Pg 4 of Plaintiff's Bundle of Documents.

*will speed up lots of things, including you being paid your monies as well.*⁵

[10] The next email from Mr. Patel to Mr. Chand on 1 September 2010 is more telling and requires setting out in detail. The email reads:⁶

We note that you continue to make allegations and threats against us for your outstanding debt. We have made our position clear to you in our email dated 24 February 2010. For the record, we again advise you as follows:

- 1. Prior to coming to us, Sunil, you and Dominion Finance had negotiated and entered into an arrangement whereby your wife, Shaleshni, was to sell the subject property to Sunil's wife, Razmi Pal, for \$700,000 which was to be paid as follows:
 - a) \$250,000 upon transfer of property.*
 - b) \$250,000 on completion of building duly passed by the engineers*
 - c) \$200,000 once building is occupied by tenants.**
- 2. The above arrangement was specifically agreed to by you in Dominion's Loan Offer letter dated 15 December 2008.*
- 3. When we were instructed on 18 December 2008 to prepare Transfer of the said property from Shaleshni to Razmi, we were not advised of the arrangements you had made with Dominion. We were given to understand that it was a cash transaction and that full \$700,000 was to be paid from a loan from Dominion.*

⁵ It appears that the solicitor was indicating that DFL would pay the Plaintiff the outstanding amount from the sale price of \$450,000 from the proceeds of the Mortgage sale.

⁶ Pg 3 of Plaintiff's Bundle.

4. *We had therefore prepared Transfer and other related documents which were signed and stamped in readiness for settlement.*

5. *On 23 December 2008, we issued Interim Certificate to Dominion requesting them to forward their cheque for \$700,000 payable to our trust account. It was only then we came to know from Dominion that you had entered into an arrangement with Sunil and Dominion that you will receive staggered payments as stated in (1) above.*

[11] There was some effort by the parties in November 2010 to resolve this dispute. By this time the Plaintiff had instructed Ian Roche & Associates to represent him whilst the Defendant was then represented by Michael Benefield. There were communications between the solicitors on 15 and 16 November 2010. Mr Benefield wrote to Mr Roche by email on 15 November to advise:⁷

I have just in the last few minutes had a call from Sunil [the Defendant's husband]. It appears there has been some developments in the rather complex (factually at any rate) matter between all parties. Claims/allegations and counter claims/allegations etc. The practical result would appear lots of litigation and lots of time spent which is not desirable.

He explained much of it (at least as he understood it) to me. I am not all that clear on everything other than to agree with the conclusion, - lots of litigation, lots of time with probably no real winners.

In the end Sunil is prepared to settle with Sushil [the Plaintiff's husband] by transferring to Sushil a Savusavu freehold foreshore property which he says has a \$470,000 value, (Fiji \$ I assume) and each party walk away. Sushil through his wife would continue with the Suva property and dealing with Dominion Finance.

⁷ Pg 35 of Plaintiff's Bundle.

I gather you are endeavouring to have meetings with Sushil and wife, I am sure endeavouring to see if something practical can be made of the mess. A mess it appears brought about by two friends trying to bend rules to help each other, etc

All of which has now come unstuck, etc.

- [12] On 16 November 2010, Mr Pal sent an email to his solicitor, copied to Ian Roche & Associates, offering to settle the dispute with the Plaintiff with the payment of \$50,000 and the abovementioned freehold property in Savusavu. Mr Pal stated that the allegations against him and his wife were not true and that he was making the offer to *'settle the matter now rather than losing everything'*. The Plaintiff's then solicitors responded the same day with a counter offer of \$150,000 plus the Savusavu property. It appears that that counteroffer was not accepted.
- [13] The Plaintiff then escalated the dispute by making a report to the police in about June 2012 alleging fraud and forgery with respect the sale of the Tamavua property.

The present proceedings

- [14] Five years after making the complaint to the police, the Plaintiff filed the present proceedings.⁸ The Statement of Claim is succinct. The Plaintiff pleads that the balance of the sale price, being \$450,000, remains unpaid. She seeks judgment in the amount of \$450,000 plus costs.
- [15] The Statement of Defense and Counterclaim go into more detail – by necessity given the complex arrangements between the parties and Dominion Finance Limited. The Defendant pleads that the Plaintiff breached the terms of the arrangement on account of compliance issues with the Suva City Council and the Department of Town and County Planning. The Defendant also pleads that due to the compliance issues DFL

⁸ In evidence, Mr Chand stated that he had also brought separate proceedings against DFL in Fiji in respect to the mortgagee sale and against the Defendant in New Zealand in respect to the same issues in the present proceeding. Mr Chand indicated that the latter proceedings are pending, awaiting the outcome of this case.

disposed of the Tamavua property by mortgagee sale which has caused the Defendant to lose the Tamavua property and suffer a total loss of \$2.3 million.

- [16] The Plaintiff filed a reply and defence disputing the allegations by the Defendant.

Evidence at trial

- [17] The trial was conducted on 13 December 2024. The husbands of the Plaintiff and the Defendant provided evidence. Much of that evidence has already been set out above.

- [18] Mr Chand (the Plaintiff's husband) stated he is a project manager now living in Australia with his wife. He discussed each of the documents in the Plaintiff's Bundle including the Transfer signed by his wife on 18 December 2008.⁹ With respect to his reasons for his letter of 4 June 2012 to the police, he stated that he understood the Defendant was not in the country. Mr Chand confirmed that Ramesh Patel was acting for both the purchaser and vendor in the 2008 sale.

- [19] In cross examination, Mr Chand stated that he was not aware before the transfer that the full amount of \$700,000 would be paid later. He stated that Mr Patel informed him after the transfer that the payments would be staggered – which is at odds with Mr Patel's email to Mr Chand on 1 September 2010. At the time of the transfer, he was migrating to Australia. Nevertheless, he accepted that he was aware that he would receive the balance when the construction had been completed (the timing of receiving this advice was unclear). He understood that he would be paid by DFL. He stated that he asked his lawyer many times when he was going to receive the \$450,000 and at some point (it is unclear when) he appears to have been informed that he would receive the money when the construction was complete. Mr Chand stated that there were many emails and correspondence with Ramesh Patel on the matter and referred to the documents in the Plaintiff's Bundle – which I note includes Mr Patel's letter to DFL dated 23 December 2008 and Mr Patel's email to Mr Chand on 1 September 2010 wherein the exact circumstances of the staggered payments was set out and Mr Patel expressly stated that Mr Chand was aware of this arrangement before 18 December 2008. Mr Chand accepted that the construction was incomplete when the defendants

⁹ Pgs 25-26 of Plaintiff's Bundle.

purchased the property but stated he sold it on an 'as is, where is' basis. He described Ramesh Patel as a good friend of his and that they had done business together.

[20] In re-examination, Mr Chand stated that the Suva City Council never issued a stop work notice to him during their construction of the 5-storey building. Mr Chand stated that a Sale and Purchase Agreement had been signed by both parties and sent to Mr Patel but that despite efforts to obtain a copy had not received the same.¹⁰

[21] Mr Pal (the Defendant's husband) provided evidence for the Defendant. He is a project manager employed in construction. He stated that he and his wife own Inspiron Construction Limited. He sought to produce a number of documents in the Defendant's Bundle of Documents. As many of these documents had not been put to Mr Chand in cross-examination I did not allow these documents to be admitted. Mr Pal stated that there was never a sale and purchase agreement between the parties – I accept this as I found Mr Pal to be a reliable and trustworthy witness.¹¹

[22] In 2008, Mr Pal inspected the Tamavua property with Mr Chand. The property was a shell and he approached DFL to secure a loan to complete the construction. The arrangement being payment of \$250,000 to the Plaintiff upfront and then two further staggered payments of \$250,000 and \$200,000 following completion and sign-off from the Suva City Council. The security for the loan from DFL was the Tamavua property plus two other properties owned by the Defendant and her husband, being a property in Taveuni and a property in Pacific Harbour.

[23] When the construction was about 90% complete, with one stage remaining, Mr Pal was informed by the Suva City Council that the developers did not have consent for a five-storey building, only a three-storey building, and that he would be required to demolish two levels. He was informed by the Suva City Council that a notice had been served on the previous owner. Because he could not complete the construction and could not, therefore, make final payments on the loan from DFL, the latter arranged a mortgagee sale. DFL sold the Tamavua property as well as their two other properties.

¹⁰ This is difficult to reconcile with the emails from the parties lawyers in 2010 that the sale arrangement had been loose.

¹¹ Further, no agreement was produced by the Plaintiff in evidence.

Mr Pal stated that he lost his properties and his savings and has suffered considerable stress.

- [24] In cross-examination, Mr Pal was asked why he offered to settle in 2010 if he did not owe the money. He stated that the Plaintiff was calling his family and advising them that he had to pay and because of the pressure he made the offer.

Decision

- [25] The claim and counterclaim are brought on the basis of an arrangement between the parties to sell the Tamavua property to the Defendant for the amount of \$700,000. In the normal course, the respective obligations and rights of the parties to a sale of property would be set out in the Sale and Purchase Agreement. The Plaintiff's husband stated that they did sign such an agreement. No such agreement has been produced. I accept Mr Pal's evidence that there was no such agreement. It is consistent with the fact that no agreement has been produced as well as the solicitors communications over the material time which make no reference to any such agreement.

- [26] It was, therefore, an informal arrangement between the parties. What were the terms of this arrangement? The Plaintiff says that she was to receive payment of \$700,000 up front in exchange for the transfer of the property. I do not accept this. There is no documentary evidence to support this and, indeed, all the documentary evidence that is available (from the Plaintiff's Bundle) demonstrates that the agreed arrangement was staggered payments. The first payment of \$250,00 was to be made at the time of Transfer and was indeed made to the Plaintiff. The second payment of \$250,000 was to be made when the engineer signed off following completion of the construction and the third and final payment of \$200,000 was to be made once the building was occupied by tenants. Neither of these latter two events occurred because the Tamavua property was sold by DFL in a mortgagee sale. Mr Pal stated that he was unable to complete construction because the Suva City Council stopped construction due to the building having 5 floors, two more than was approved. I accept Mr Pal's evidence. As stated, I found Mr Pal to be a trustworthy and reliable witness. He made a number of concessions without hesitation in cross-examination and appeared genuinely to provide an accurate account of his recollections.


- [27] Who was at fault for the fact that the construction did not have the requisite approval for a five story building? In my view, it is irrelevant who was at fault – although I am inclined to accept Mr Pal’s evidence that the Defendant was not informed of this by the Plaintiff but equally inclined to the view that the Defendant ought to have undertaken proper due diligence before the purchase (it is likely that both parties took some liberties given the familiarity between the two husbands).
- [28] Irrespective who was at fault for the failure, the fact is that the events that triggered the second and third payments did not occur and the Plaintiff was, therefore, not entitled to payment. As there was no written agreement between the parties setting out their rights and obligations, neither had recourse against the other for the failure. The arrangement between the two parties did not make provision for any failure and did not set out any obligations or expectations on the Defendant. As Mr Benefield indicated in the 2010 email exchange, the parties loose approach had come ‘*unstuck*’ and the ‘*mess*’ was ‘*brought about by two friends trying to bend rules to help each other*’. Neither party has come out of the mess well. It appears that the Defendant has suffered most.
- [29] In light of the above, neither party can succeed with their claim against the other. The offer by the Defendant to the Plaintiff in November 2010 was generous in the circumstances and, again, I accept Mr Pal’s evidence that the offer was made simply to put to bed the stress of the dispute.
- [30] Some brief comments in respect to the parties closing written submissions.
- i. The Plaintiff contends that the Defendant’s failure to put certain documents to Mr Chand in cross-examination mean that the Defendant is to be taken as having accepted that she was liable to pay \$700,000 in exchange for the transfer of the Tamavua property. As indicated above, it was plainly put to Mr Chand in cross-examination that the payments were to be staggered and paid on completion of the construction. It was unclear when he says he was informed of this - it appears that he suggests the advice came after the transfer. I found Mr Chand’s evidence to be largely unsatisfactory. He made few if any concessions and glossed over or was vague about facts that were unhelpful or inconvenient to his case.

- ii. The Defendant relies on the tort of misrepresentation to found her counterclaim. This cause of action was not pleaded by the Defendant in her counterclaim. In any event, given the loose arrangement between the parties I cannot be confident what representations were made between the parties leading up to the sale in 2008.

[31] My orders are as follows:

- i. The Plaintiff's claim is dismissed.
- ii. The Defendant's counterclaim is dismissed.
- iii. Each party will bear their own costs.




D. K. L. Tuiqereqere
JUDGE

Solicitors:

Kohli and Singh Suva for Plaintiff

Toganivalu Legal for the Defendant