

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. **HBC 323 of 2020**

BETWEEN: **BLUEWATER REAL ESTATE (FIJI) PTE LIMITED T/A HARCOURTS** a
limited liability Company having its registered office at Unit 1, 87 Gordon
Street, Suva.

PLAINTIFF

AND: **B PRASAD AND SONS PTE LIMITED** a limited liability company having its
registered office at Lot 2 Kava Street, Industrial Sub Division, Laucala
Beach Estate.

DEFENDANT

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Nandan S.** for the Plaintiff

Mr. Niubalavu P. for the Defendant

DATE OF JUDGMENT: 19th March, 2026

JUDGMENT

[Breach of Agreement]

Introduction

1. The Plaintiff filed an amended Statement of Claim against the Defendant and sought for the following orders:
 - (i) Judgment against the Defendant in the sum of \$82,840;
 - (ii) Costs of this Action, and
 - (iii) Any other amounts deems just.
2. Subsequently, the Defendant filed its Amended Statement of Defence and sought for the Plaintiff's Claim to be dismissed with costs.
3. The Plaintiff then filed a Reply to the Amended Statement of Defence and sought for the Amended Statement of Defence to be struck out with Costs and Judgment to be entered as per the Plaintiff's Claim.

Evidence

4. The Plaintiff called one witness (PW1) Savinesh Chandra Mudiliar and the Defendant also called one witness - (DW1) Ashok Kumar Prasad.
5. All evidence has been recorded and appears on the file. The evidences of the witnesses will not be reproduced in its entirety. Only the pertinent parts of the evidence addressing pivotal issues within the Plaintiffs claim and Defendants Statement of Defence will be analyzed and determined in order to reach a just and fair Judgment.

Determination

6. The Defendant was the registered proprietor of the property comprised in CL 12198 Lot 3 SO 2768 Baka Place, Laucala Beach Estate and on 5th July 2019 entered into a listing agreement with the Plaintiff to sell his property.
7. The listing Agreement was for the Exclusive and Sole Agency from 5th July 2019 to 5th September 2019. After the expiration of the exclusive and Sole Agency, the Agency was to continue as General Authority until 7 days after a written notice to the Plaintiff is given by the Defendant.
8. If the Defendant sells the property to **any person that was introduced to the Defendant** during the Exclusive and Sole Agency and General Agency, the Plaintiff was to receive a Commission equivalent to 4% plus VAT of the Sale Amount.
9. On or about 30th October 2019, the Plaintiff introduced Veera and Monica Chute of Value City (South Pacific) Pte Limited to the Defendant.

10. According to [PW1] - Savinesh Chandra Mudiliar, he received a phone call from Value City with an offer of \$1.9 million, but the Defendant B. Prasad and Sons, wanted \$2 million.
11. The property was viewed by Value City for less than an hour and PW1 sent an email to the Defendant, B. Prasad and Sons at 1.29 pm. At that time, PW1 told in his evidence to Court in his Cross-Examination that there was no need to tell the Defendant, B. Prasad and Sons about the interest of Value City (South Pacific) Pte Limited, until the buyer has expressed the interest.
12. When asked whether there was any viewing by Value City (South Pacific) Pte Limited and introduction of Value City (South Pacific) Pte Limited to the Defendant, B. Prasad and Sons? He confirmed that there was introduction of Value City interest to the Defendant, B. Prasad and Sons (Pte) Ltd.
13. On or about 26th May 2020, the property was transferred to the Purchaser in consideration sum of \$1,900,000.
14. The Plaintiff claims the Defendant was in breach of the listing Agreement, failed to pay the Plaintiff the commission of \$82,840 for introducing the Purchaser to the Defendant.
15. However, the Defendant in his Amended Statement of Defence and oral evidence denies that neither Value City (South Pacific) Pte Limited nor its Agent, was ever introduced to the Defendant by the Plaintiff.
16. The Defendant's contention is that the Plaintiff failed to perform its obligation in the Agreement and was not able to secure a buyer within the Agreed Listing period at the Agreed Listing Price of \$2 million.
17. He added that the Sale to the Purchaser was below the Agreed Listed Price of \$2 million and was made outside the listing period, thus cannot be relied on by the Plaintiff as performance on his part of the Agreement.
18. According to the Defendant, the General Authority clause relied on by the Plaintiff in contrary to Law, not applicable and cannot be relied on the Plaintiff. However, the Defendant stated in his Statement of Defence that if General Authority can be relied on by the Plaintiff, then an email was sent to the Agent on 31st October 2019 was sufficient notice of cancellation of the listing, general authority relied on and/or engagement of the agent (if any).
19. Now, if the email was in fact sent on 31st October 2019 to the Agent by the Defendant, then under the General Authority, the clause of the Harcourt's Agency Agreement would have

ended on 7th November 2019, after expiration of seven (7) days written notices of its cancellation is given by the Defendant to the Plaintiff.

20. [PW1] Savinesh Chandra Mudiliar explained in his evidence that he was still following up on the Defendant's interest without an Authority from (Plaintiff) B. Prasad and sons since the property was still within their listing period.
21. PW1 confirmed that he called B. Prasad and sons to make arrangements for site visit, but was certain that a meeting was arranged since shop and safe tenants were on the said property.
22. The question arises as to why [PW1] Savinesh Chandra Mudiliar was doing all these?
23. The answer is that he was carrying out due diligence to eventually finalize the purchase with the interested purchaser, Value City (South Pacific) Pte Limited.
24. It cannot be disputed that the property in question was put on market by the Plaintiff on 29th October 2019. The Defendant, B. Prasad and sons was aware of this fact.
25. Value City (South Pacific) Pte Limited contacted Harcourt's (Plaintiff) for purchase via phone calls and SMS [Exhibit -P4].
26. On 29th October 2019, PW1 [Savinesh Chandra Mudiliar] spoke to Value City and made arrangements with B. Prasad (Defendant). Viewing of the property was confirmed for 30th October 2019 at 1pm. Value City confirmed the interest in purchasing.
27. According to (PW1) Savinesh Chandra Mudiliar, the meeting of 30th October 2019 at 1pm took place. Veera and two others were present, maybe the GM and lady and PW 1 were present and discussed details and Value City said interesting and will revert with an offer. Offer was made for \$1.9 million, however, B. Prasad (Defendant) rejected the offer of \$1.9million dollars.
28. It was not a coincidence that Value City (South Pacific) Pte Limited came on board by itself since PW1 - Savinesh Chandra Mudiliar continued to discuss the sale with Value City (South Pacific) Pte Limited who had vested and showed interest in the purchase of the said property.
29. It was a afterthought of the Defendant that he rejected Value City (South Pacific) Pte Limited's offer of \$1.9million, because the Defendant knew he had a client at hand and will eventually sell his property by himself without paying any commission to the Plaintiff as agreed upon.
30. This confirms that the Agent (Plaintiff) has introduced Value City (South Pacific) Pte Limited to the Defendant, B. Prasad and Sons (Pte) Ltd on 30th October 2019.

31. It was only one hour later that B. Prasad and Sons (Pte) Ltd (Defendant) sent an email [Exhibit P5] to the Agent saying '*B. Prasad (Defendant) is not interested in selling the said property anymore.*' [Email dated 31st October 2019 at 11.26am from B. Prasad to the Plaintiff refers].
32. The email was then forwarded to the office and removed the sale of the property after seven (7) days of receipt of the written email notice from the market.
33. According to PW1, Value City (South Pacific) Pte Limited was still interested in the purchase of the property but the sale did not eventuate then because B. Prasad and Sons (Pte) Ltd was asking for a purchase price of \$2 million.
34. However, three(3) months later, PW1 noticed the Value City (South Pacific) Pte Limited board on the same property and made a search and discovered that the property was transferred from B. Prasad and Sons Limited (Defendant) to Value City (South Pacific) Pte Limited (Plaintiff) with sale price of \$1.9 million.
35. The Value City (South Pacific) Pte Limited's Board on the premises triggered suspicion on PW1 and search eventuated in confirming the transfer of the property to Value City (South Pacific) Pte Limited.
36. [DW1] Ashok Kumar Prasad of B. Prasad and Sons Limited told Court that Value City (South Pacific) Pte Limited nor any other buyer(s) were never introduced to him by **the Agent**.
37. If there was no introduction of purchaser Value City (South Pacific) Pte Limited, to the Defendant, then how come it was within a day of site view by Value City (South Pacific) Pte Limited, that talks for sale were sealed and the Defendant sent an email to the Agent one hour after informing withdrawal of his sale from the market but afterwards eventuated with the sale with Value City (South Pacific) Pte Limited.
38. After 5th September 2019, when Listing Agreement Expired, DW1 wrote to the Agent that the Defendants are pulling out and not going to sell their property in question.
39. Series of text message (SMS) were tendered including the transfer documents showing purchase was made by Value City (South Pacific) Pte Limited.
40. After DW1 cancelled the Agreement, then Value City (South Pacific) Pte Limited came into the picture.
41. Veera Chute from Value City (South Pacific) Pte Limited came to DW1's office and asked DW1 if he was selling his property she viewed the property and agreed to purchase the property. Hence, a sale and purchase Agreement was entered into [Exhibit D3].

42. DW1 was looking for purchase price of \$2m, however, the offer made was \$1.8m.
43. According to DW1, Veera Chute from Value City (South Pacific) Pte Limited contacted DW1 contacted within the Listing period.
44. The witness (DW1) told Court that he did not know Veera Chute, never spoke to her on phone, until she came to DW1's office.
45. DW1 then sent his notice of Cancellation for Listing Agreement on 30th October 2019.
46. [PW1] Savinesh Mudiliar never informed DW1 that Veera Chute had offered \$1.9 million for the purchase price.
47. If during Agency period there was a purchaser then that tentamounts to an introduction.
48. In the interests of all, the parties to the proceedings should have subpoenaed Value City (South Pacific) Pte Limited personal to testify what transpired and how come they came on board and eventually purchased the property.
49. Unfortunately, they were not subpoenaed to clear the doubt as has arisen herein.
50. On the balance of probabilities, I find the following:
 - The Defendant, B. Prasad & Sons Ltd entered into a Listing Agreement with the Plaintiff.
 - The listing agreement was for the exclusive and sole agency from 5th July 2019 to 5th September 2019.
 - After the expiration of the Exclusion and Sole Agency which would have expired on 7th November 2019, the Agency was to continue as General Authority until the seven (7) days after a written notice is given to the Plaintiff by the Defendant.
 - The Defendant sent its email 31st October 2019 to the Agent (Plaintiff) expressing his withdrawal of sale.
 - The Defendant sold the property to Value City (South Pacific) Pte Limited for a consideration sum of \$1.9 million who in fact was introduced by the Plaintiff to the Defendant.
 - The terms and conditions under General Authority stipulated that if a buyer is introduced to the property and the property sold to a buyer, the Plaintiff is entitled to the Commission as agreed to by owners at 4% plus vat.
51. Therefore, the Plaintiff was entitled to receive and paid its commission of 4% on the sale price of \$1.9 million which comes to \$76,000 plus VAT which tallies to \$82,840.

52. Thus, the Defendant was in breach of the Agreement when it failed to pay the 4% commission plus VAT to the Plaintiff for the sale of the property in the consideration sum of \$1.9 million.
53. For the aforesaid rational, coupled with the evidence(s) of [PW1] Savinesh Chandra Mudiliar and [DW1] Ashok Kumar Prasad, there will be Judgment entered for the Plaintiff against the Defendant in the sum of \$82,840.

Costs

54. The matter proceeded to trial and parties to the proceedings filed the documents and written submissions. It is only just and fair that the Defendant pays the Plaintiff a sum of \$2,500 as summarily assessed costs within 14 days' timeframe.
55. Following are the final orders of this Court.

Orders

- (i) Judgment for the Plaintiff against the Defendant in the sum of \$82,840.
- (ii) The Defendant to pay the Plaintiff a sum of \$2,500 as summarily assessed costs within 14 days' timeframe.
- (iii) File closed with orders intact.

Dated at **Suva** this **19th** day of **March**, 2026.




VISHWA DATT SHARMA
PUISNE JUDGE

CC: Reddy and Nandan Lawyers, Suva
Oceania IP, Suva