

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction
Civil Action No. 498 of 1979

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Between:

STANDARD CONCRETE INDUSTRIES LTD.

Plaintiff

and

S.L. PREMJI

Defendant

Mr. G. Keil for the Plaintiff

Mr. K. Chauhan for the Defendant

JUDGMENT

This is an action by the plaintiff company against the defendant seeking judgment in the sum of \$1,768.19 being the cost of concrete blocks delivered and supplied to and at the request of the defendant during the months of October, November and December 1976 of which full particulars had been supplied to the defendant.

The defendant denies any liability to the plaintiff company in this action and counterclaims for a sum of \$9,164.58 which is said to have been incurred under the following circumstances.

The defendant bought concrete blocks from the plaintiff company to erect and complete a dwelling-house on his property at Tamavua. It is said that at the time of the sale of the blocks the plaintiff company, by its agents or servants had made known to the defendant that the concrete blocks were water-proof and that the plaintiff company knew that the blocks were bought for the

purpose of erecting a fair-face type construction.

Alternatively it is claimed that the sale transaction between the parties was a sale by description and it was an implied condition of the sale that the concrete blocks were wholly water-proof.

It is said that in breach of the conditions of sale the plaintiff company delivered to the defendant concrete blocks which were not water-proof and as a result the defendant's building experienced water leaks through the concrete blocks and consequently the defendant had suffered loss and damage.

Particulars of Damages Claimed

(a) <u>EXTRA PRICE</u> charged by the Plaintiff and paid by the Defendant for water-proofing block at 3 cents per block (8990 blocks at 3 cents)	\$269.70
(b) <u>PAINTING OF THE PREMISES:</u>	
(i) 264 litres C B Sealer paints	592.56
(ii) 216 litres S G paints	560.32
(iii) Labour costs including first coat, second coat and finishing coat - 500 square yards at 1.2 hours per square yard = 600 man hours by 80 cents per man hour	480.00
(iv) Painting Brushes	30.00
(v) <u>LABOUR COSTS</u> in erecting scaffolding from re-used formwork (40 hours at 80 cents per hour)	32.00
	<u>\$1,873.38</u>
(vi) <u>GENERAL:</u>	
Re-applying this paint system every eight years on the basis that the residence will stand for 40 years (4 x \$1800 = \$7200)	7,200.00
Total	<u>\$9,164.58</u>

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It is not disputed that between October and December 1976 the plaintiff upon orders received supplied to the defendant concrete blocks which were required by the defendant for the construction of a residential house at Tamavua. It is also not disputed that the defendant was at the material time building a fair-face type of construction which would not require painting and plastering. It appears to me that when the defendant bought the concrete blocks he somehow believed that they were water-proof in the strict literal sense. However, I think it is clear from the price list upon which the sale of concrete blocks was transacted and from the evidence of the general manager of the plaintiff company, James McDonald, that there was no such thing as a 100 per cent water-proof block and that the defendant's belief was in fact erroneous for which he had only himself to blame. I do not think that the note on the bottom of the price list could be regarded as asserting that the blocks sold to the defendant were water-proof in the strict literal sense. The note merely reads, "Blocks containing a water-proofing additive are available on application in eight inches and six inches sizes. Prices for the full size block with this additive are 7 cents extra and 4 cents for other sizes."

In the course of construction of the building leaks were detected in the block walls and the attention of James McDonald was drawn to them. He visited the work site and on that occasion explained to the defendant's brother, G. Lal, that the main source of the leaks was in the joints between the

blocks and not through the blocks themselves. He said that both the vertical and horizontal joints were leaking. He told G. Lal that it was technically impossible to make a 100 per cent water-proof block. He pointed out that the additive in the blocks had the effect of making the blocks water-resistant but not 100 per cent water-proof. The process was that additive was mixed with concrete in the manufacture of concrete blocks. All it did was to make the concrete in the block more dense thus making passage of water through the blocks more difficult. He explained that the leaks were due to heavy rain which must have filled the cavities in the blocks with water. He said it is possible with proper degree of expertise in fair-face type of building construction to erect a block wall that would not allow water leaks to occur. James McDonald had offered at the time \$500 as a contribution towards the payment of the Gunac process to help seal off water leaks in the blockwork. The offer was made in the interest of good business relationship. The offer has not been withdrawn. I accept the evidence given by this witness not only as to the cause of the leaks but also in regard to the nature of concrete blocks his company sells in the open market.

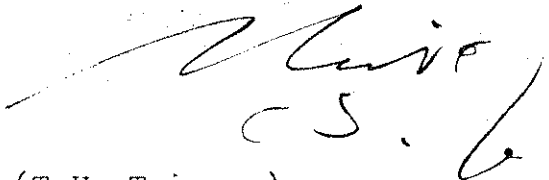
It appears to me that the main problem in the construction of the defendant's house was his choice of builder. In my opinion it was an extremely ill-advised arrangement. According to the evidence the work was done on a labour and material cost basis. The building supervisor chosen was evidently short in skill and experience in the construction of

fair-face type building. No doubt the defendant thought he would save money under that arrangement. Unfortunately this has not proved to be the case and of course the fault for this is exclusively that of the defendant himself for resorting to it. It is clear from the evidence of Cedric Power, a highly qualified civil engineer with many years of experience in the building industry that in a fair-face block work much skill was required in regard to the method of laying the concrete blocks because of the intricate nature of the task. The block-layer must know what he was about if the job was to be successfully carried out. Accepting as I do the engineer's views of the matter, I find as a fact on the evidence before me that the building supervisor chosen for the task, one Rajendra Prasad (D.W.3) was not equal to the skill and experience required for the job of erecting a fair-face type construction. I find that it was due entirely to the lack of skill and experience on the part of those concerned in the laying of fair-face block work of the building which resulted in indifferent work and caused the water leaks experienced in the defendant's house.

In the result the plaintiff company must succeed in its claim for \$1768.19.

However, this amount must be reduced by \$500 which was a token amount offered by the plaintiff company to the defendant when the water leaks in the blockwork of the building were experienced and when the defendant realised that there

was no such thing as water-proof concrete blocks. The offer is still at large and has not been withdrawn. As regards the defendant's counterclaim against the plaintiff company I can find no proper legal basis to support it. The counterclaim therefore is dismissed. There will be judgment for the plaintiff company in the sum of \$1,268.19 with costs.


C.S. 6
(T.U. Tuivaga)
Chief Justice

Suva,

16th May 1980.