

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction
ACTION NO. 180 OF 1984.

Between:

SHIU CHARAN s/o Begrih Plaintiffs
and CHANDRA WATI d/o Mani

- and -

DON PARSHOTAM trading as Defendant
DONQUEEN'S REAL ESTATE.

Mr. H.M. Patel for the plaintiffs.
Mr. V.K. Kapadia for the defendant.

J U D G M E N T

The plaintiffs application purports to be made under Order 27 rule 3 of the Supreme Court Rules. However, the affidavit filed in support of the application is in support of an application for summary judgment under Order 14 in that it alleges that the defendant has no defence to the action.

Order 27 has application where admissions of fact are made by a party and the other applies for such judgment or order as he may be entitled to upon those admissions.

The defendant in his defence admits the first three paragraphs of the Statement of Claim which are as follows :

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- "1. THE Plaintiffs as the Vendors and Mitieli Daurua and Raewyn Sandra Daurua of 23 Bureta Street, Raiwai, Lab technician and Nurse respectively as the Purchasers on the 31st of October, 1983, entered into a written agreement of Sale and Purchase of all that piece of land described as Crown Lease 2304 on Lot 3, D.P. No. 2814 and situated at 62 Bryce Street, Raiwaqa, Suva.
- 2. THAT the said Purchasers pursuant to paragraph 3 and 4 of the said Agreement of Sale and Purchase paid a deposit purchase price of \$700:00 to the Defendant and whereby the Defendant has acknowledged the receipt of the said sum as deposited in his Trust Account.
- 3. THE said purchasers had since decided not to go through with the purchase of the said property because of financial difficulties. The Plaintiffs and Defendant are well aware of this fact."

The plaintiffs in paragraph 4 of the Statement of Claim claimed to be entitled to the \$700. The defendant denies this claim and alleges that his costs and expenses including legal fees amount to \$480 and he states he is prepared to refund the sum of \$220.

There is clearly an issue to be tried and Order 27 can have no application where a basic fact pleaded namely the entitlement to the \$700 is not admitted.

From the defence it would appear that the defendant intends to claim commission for effecting a sale of the plaintiffs' premises although this defence has not been clearly expressed.

R The ^{agreement} ~~argument~~ between the plaintiffs and the purchasers Mitieli Daurua and Raewyn Sandra Daurua a photo copy of which is attached to Mr. Shiu Charan's affidavit sworn the 31st March, 1984, appears to be an unstamped photostat copy of the original document.

Under paragraph 2 the agreement is expressed to be subject to the purchasers obtaining a \$13,000 loan from the Housing Authority and to the consent of the "Director of

Lands/Housing Authority".

It is common ground that the sale and purchase has not been completed because of financial difficulties experienced by the purchasers.

If there is no enforceable sale and purchase agreement, the purchasers would be entitled to refund of the \$700 less legal costs they agreed to pay. In that event neither the plaintiffs or the defendant would be entitled to any part of the deposit. Since the money was paid to the defendant by the purchasers they could be faced with a claim from the purchasers demanding a refund.

I mention these matters because it is far from clear from the pleadings what the position is as regards the sale and purchase. If the agreement is enforceable and the defendant acted as the vendors' agent on the sale he could be entitled to commission.

The application is dismissed. Costs of application are to be costs in cause since the defendant purports to admit liability for part of the claim.

R.G. Kermod
(R.G. KERMODE)
J U D G E

S U V A,

1ST MAY, 1984.