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IN THE COURT OF APPEAL, FIJI ISLANDS  
ON APPEAL FROM HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU0039 OF 2001S  
(High Court Civil Action No. HBA0009 of 2000s)

BETWEEN:

SUN ENTERPRISES LIMITED

*Appellant*

AND:

GUARDFORCE FIJI LIMITED

*Respondent*

Coram:

Tompkins JA, Presiding Judge  
Davies, JA  
Ellis, JA

Hearing:

Wednesday, 13<sup>th</sup> November 2002, Suva

Counsel:

Mrs. V. Lal for the Appellant  
Mr. N. Prasad for the Respondent

Date of Judgment: Friday, 15<sup>th</sup> November 2002

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JUDGMENT OF THE COURT

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This is an appeal from Judgment of a Judge of the High Court of Fiji, Shameem J. The learned trial Judge dismissed a civil appeal from a Judgment of the Magistrates Court Suva, constituted by Ms Gwen Phillips, Resident Magistrate.

Under s.3 of the Court of Appeal Act (Cap.12) as amended by s.4 of the Court of Appeal (Amendment) Act 1998, such an appeal is limited to a question of law. Rule 29 of the Court of Appeal Rules requires that the notice of appeal shall state precisely

the question or questions of law upon which the appeal is brought.

In the present cases, the notice of appeal specifies sixteen grounds of appeal. However, it is difficult to discern a clear question of law amongst them. Most of the grounds specify issues of fact such as the following:

**“The learned appellate Judge was wrong in not holding that the learned trial Magistrate failed to fully and properly evaluate and consider the evidence and materials.”**

**“That the learned appellate judge was wrong in not holding that the learned trial Magistrate’s decision is against the weight of the evidence.”**

Such grounds do not raise questions of law.

The learned Magistrate found in favour of the respondent, Guardforce Fiji Limited (‘Guardforce’), as she believed the evidence given on behalf of Guardforce and did not believe the evidence given by Mr Seeto, the only witness called on behalf of the appellant, Sun Enterprises Limited (‘Sun Enterprises’). The Magistrate said that the central issue in the case was credibility. She believed the witnesses called for Guardforce and disbelieved Mr Seeto.

On the issue as the contract, the Magistrate said:

*"I found the witnesses who testified on behalf of Guradforce far more credible. DW1 impressed me as an honest person whose testimony I am satisfied was truthfully given. I have accepted his account over that from Mr Seeto in connection with the circumstances surrounding the signing of the contract between the parties on the 3/5/91. I am satisfied that he left a copy of the signed contract containing the General Conditions with Mr Seeto immediately following execution of same."*

On the issue of an alleged representation, the Magistrate said:

*"The testimony from Mr Barrack was compelling. He was clear, firm and consistent and it is his account of the dealings between the parties that I have accepted was truthfully given. His testimony on behalf of Guardforce is substantiated by documentary records and consistent with the documentary records before the court. At the trial the amount claimed and invoiced, being fees for security services provided, was not disputed or otherwise challenged - this was conceded by Mr Seeto under cross-examination, that Sun Enterprises did not dispute the amounts charged in the invoices."*

On the issue of negligence, the Magistrate said:

*"I found the evidence from DW2 more compelling than that from Mr Seeto in regard to the pertinent premises being burgled. On the watchman's testimony I have found no evidence of negligence or breach of contract. His testimony has convinced me that normal security procedures were adhered to, contrary to the assertions by Sun Enterprises."*

Findings such as these, which were based upon the evidence given, raise no question of law. The Magistrate explained why she preferred the evidence given on behalf of Guardforce. She considered that the witnesses for Guardforce gave persuasive, credible

evidence. The Magistrate could have expressed at greater length her reasons for thinking that Mr Seeto was not a credible witness. At p.110 of the Record, she warned Mr Seeto:

**“Mr Seeto you have been both evasive and long winded and your demeanour in court leaves a low impression of your case.....Please limit your answers to the questions that learned counsel are putting to you.”**

However, the Magistrate made her approach clear by referring to the conflict between the evidence given by Mr Seeto on the one hand and that given by the several witnesses for Guardforce, all of whom were credible, on the other. The Magistrate also referred to the fact that the oral evidence given on behalf of Guardforce accorded with the documentary evidence.

No question of law arise from these findings.

The trial Judge saw no error in the approach taken by the Magistrate. The trial Judge said:

***“The learned Magistrate however did not believe Mr. Seeto. It is trite law that an appellate court will not normally interfere with findings of credibility made by a court which had the opportunity to hear the evidence of witnesses. I see no reason to depart from this general principle.”***

As there was no error in the essential findings of fact of the Magistrate, or in the approach of the Judge, it is unnecessary to consider whether cl.3 of the General Conditions of the contract would have excluded liability had the employees of Guardforce

been guilty of negligence, an issue which raised a question of law.

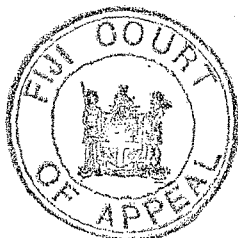
The appellant claims that an invoice rendered by Guardforce to Sun on 31 March 1996 gave rise to an equitable estoppel precluding Guardforce from claiming fees totalling \$10,323.82. In November 1993, there had been a burglary at Sun's premises and Sun suffered losses of \$15,680. On 4 January 1994, Sun wrote to Guardforce asking Guardforce to reimburse it for its loss of \$15,680. Guardforce did not do so. Sun did not pay the fees charged by Guardforce over a period of years.

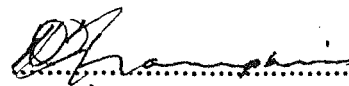
An invoice from Guardforce to Sun of 31 March 1996 showed a credit of \$10,323.82 detailed as: "TRANSFER DISPUTED A/C." The evidence of Mr F Barrack, General Manager of Guardforce, was that this step was taken because Sun had not been paying the invoices rendered by Guardforce and that the \$10,323.82 was transferred by journal to a non-current debtors account to assist the debtors' clerk to collect the current account on a regular basis.

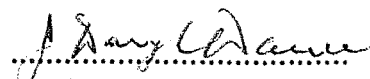
The Magistrate accepted Mr Barrack's evidence and disbelieved Mr Seeto's evidence that, as a result of discussions between him and Mr Barrack, Guardforce had credited Sun with \$10,323.82 representing the losses incurred and that, on that basis, Sun "continued business" with Guardforce.

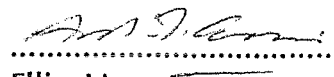
In the light of the rejection of Mr Seeto's oral evidence, the claim of equitable estoppel necessarily failed. The invoice relied upon did not make any representation as to future conduct from which Guardforce resiled or from which it would have been unconscionable for Guardforce to resile. See *Waltons Stores (Interstate) Limited v. Maher* (1988) 164 CLR 387; *The Commonwealth v. Verwayen* (1990) 170 CLR 394.

Accordingly, the appeal must be dismissed. The appellant should pay the respondent's costs of the appeal fixed at \$500.



  
Tompkins JA, President

  
Davies, JA

  
Ellis, JA

Solicitors:

Messrs. G P. Lala and Associates, Suva for the Appellant  
Messrs. Mitchell, Keil and Associates, Suva for the Respondent