

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

CIVIL APPEAL NO. ABU0014 OF 2002S
(High Court Civil Action No. HBC. 499 of 2001s)

BETWEEN:

DHIREND KUMAR

Appellant

AND:

PRAKASHNI PRASAD

Respondent

Coram:

Hon. Jai Ram Reddy, President
Hon. Sir Rodney Gallen, Justice of Appeal
Hon. Robert Smellie, Justice of Appeal

Hearing:

Wednesday, 28th August 2002, Suva

Counsel:

Mr. R. Naidu for the Appellant
Respondent in Person

Date of Judgment: Friday, 30th August, 2002

JUDGMENT OF THE COURT

Introduction:

This is an appeal from the Judgment of Scott J. in which he ordered the appellant to yield up vacant possession of a dwelling-house (flat) at 17 Gulab Nabi Street, Nausori who the respondent the registered proprietor of the same.

Further Evidence Allowed

An issue in the Court below was whether or not the property in question was

subject to the Fair Rents Act (Cap. 269). By section (24) (b) a dwelling the value of which is \$12,000.00 or more is exempt from provisions of the Act.

In the Court below the Judge dealt with this point as follows:

“In the circumstances the lease has expired and no question of the Fair Rents Act (Cap 269) can arise. In any event nothing has been placed before me by the defendant to support the unreasonable possibility that the premises do not fall within the exemption provided by Section 24 (b) of the Act.”

On appeal the respondent sought to adduce further evidence in the form of a valuation by a Registered Valuer. We exercised our discretion pursuant to s.22 (2) of the Court of Appeal Act Cap. 12 and granted leave. The special grounds relied upon were first that the appellant (defendant at first instance) raised the Fair Rents Act point but did not adduce any evidence of value. Secondly the view expressed by the Judge in the High Court and thirdly the fact that the respondent was unrepresented in both the High Court and before this Court.

The valuation of Fairview Valuations dated June 2002 of \$50,000.00 for the double storey building (the flat in question being the ground floor dwelling) exclusive of an interest in the freehold land, clearly establishes that Scott J.'s assessment was correct.

Breach of Condition of Lease

The appellant was in possession up to the 31st day of October 2001 pursuant to a formal written, duly stamped, one year lease. In terms of that lease the appellant had covenanted with the Landlord in clause 2 (j) as follows:

"At the expiration of the terms (sic) hereby created to peaceably and quietly deliver up to the Landlord the premises together with all fixtures and fittings in like condition as the same were delivered to the Tenant at the commencement of the term hereby created, authorised alterations or additions and damages by fair wear and tear and act of God excepted."

In breach of that covenant the appellant remained in possession after the 31st October 2001. Mr Naidu counsel for the appellant was unable to suggest any basis upon which his client was entitled to do so.

Respondent's Right to Possession

The respondent became the registered owner of the dwelling-house in question on the 9th of November 2001 and gave notice to quit on 12th of November 2001. When the appellant did not depart the respondent commenced proceedings on the 21st of December 2001 and obtained her order in the High Court on the 25th of February 2001. It is trite law that the owner who issues proceedings for possession effectively enters into possession upon service of those proceedings. As Lord Denning M.R. in the case of *Canas*

Property v. K.L. Television [1970] 1 A.E.R. 795 said at 799:

"My conclusion is that where a tenant has been guilty of a breach which has not been waived, then in order to effect a forfeiture, the lessor must actually re-enter, or do what is equivalent to re-entry namely issue and serve a writ for possession on the Lessee or assignee as the case may be. The lease is determined as from the date when the writ is served."

In all the circumstances there is no basis upon which the appellant can succeed. All the grounds relied upon are without merit. The appeal is dismissed. The decision of Scott J. ordering vacant possession is upheld.

Stay and Consequences

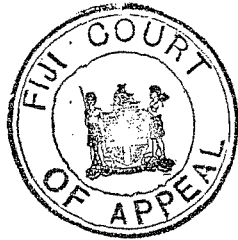
When the appeal was lodged a stay was granted pending the hearing of this appeal. A condition of a stay was payment in to Court of \$3,000 being the equivalent of 12 months rent at \$250 a month.

From that \$3,000 the respondent is entitled to be paid the following:

- (i) 10 months rent (1st November to 31 August 2002) = \$2,500
- (ii) The cost of the valuation \$280.00

(iii) Such further and other reasonable disbursements as are fixed by the Registrar.

The balance remaining, if any, is to be paid to the appellant's solicitors.



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Hon. Jai Ram Reddy, President

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Hon. Sir Rodney Gallen, Justice of Appeal

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Hon. Robert Smellie, Justice of Appeal

Solicitors:

Messrs. Sherani and Company, Suva for the Appellant
Respondent in Person