

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

CIVIL APPEAL NO. ABU0016 OF2008S
(High Court Civil Action No. HBC 397 of 2007)

BETWEEN:

LAISA DIGITAKI

First Appellant

AND:

JUST ABOUT EVERYTHING LIMITED

Second Appellant

AND:

ALEC CHANG

Respondent

Coram:

Byrne, JA
Khan, JA

Hearing:

Thursday, 5th March 2009, Suva
Wednesday, 11th March 2009, Suva

Counsel:

G.O'Driscoll for the Appellant
S. R. Valenitabua for the Respondent

Date of Judgment: Monday, 16th March 2009, Suva

JUDGMENT OF THE COURT

- [1] In this case, the respondent sued the appellants for the sum of \$119,000.00 which is the total of various smaller amounts claimed to have been either lent or paid by the respondent for the appellants and these sums are particularised in the pleadings and the judgment of the trial Judge, His Lordship Jiten Singh.

- [2] The appellants denied any indebtedness to the respondent and filed a counter claim in the sum of \$82,082.95 in the High Court.
- [3] The trial proceeded over two days and after a thorough examination of the documentary evidence and the evaluation of oral evidence given by the respondent on his own behalf and Laisa Digitaki on behalf of the first and second appellants, His Lordship, Jiten Singh concluded that the appellants owed the respondent the sum of \$108,276.27 on his claim and that the respondent owed the appellants \$17,214.00 on their counterclaim. Accordingly it is quite apparent that after hearing the case, the trial Judge adjusted the amounts claimed by the parties in accordance with his assessment of the evidence.
- [4] At the hearing of the appeal, counsel for the appellants submitted to us that the trial Judge had erred in his assessment of the evidence regarding the indebtedness of the appellants to the respondent. In support, he took us to a number of instances where he claimed the Judge had made findings contrary to the evidence.
- [5] Although His Lordship may have been in error in some of the instances referred to by the learned counsel for the appellants, we do not believe that these errors were significant enough to persuade us that his ultimate decision was wrong or perverse.
- [6] It is very difficult for an appellate court to interfere with the findings of facts of a trial Judge who had the opportunity to observe the mien, bearing and demeanour of witnesses at first hand.
- [7] As was said in *Mahadeo Singh v. Chandra Singh* [1970] 16 FLR 155, 159 by the Fiji Court of Appeal:

“Much has been written as to the position of an Appeal Court which is invited to reverse on a question of fact the judgment of the Judge, sitting without a jury, who had the advantage of seeing and hearing

witnesses. Where he has based his opinion in whole or part on their demeanour it is only in the rarest of cases the appeal court will do so."

[8] This principle is very well established and regularly applied when an attack is made on the trial Judge's findings of facts.

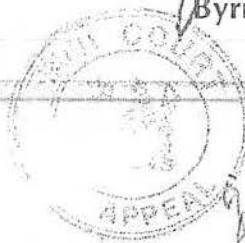
[9] We are not satisfied that there are any valid grounds upon which the trial Judge's findings of facts can be disturbed in this case. He is the one who observed the witnesses at first hand and made findings of credit. In many instances he preferred to believe the respondent rather than the first appellant.

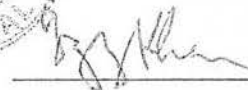
[10] Accordingly, we make the following orders:

(a) The appeal is dismissed.

(b) The appellant is to pay the respondent's costs assessed at \$2,000.00.


Byrne, JA




Khan, JA

Solicitors:

O'Driscoll and Company, Suva for the Appellants
Valenitabua Esq., Suva for the Respondent