

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA

HBC No. 147 of 2010

BETWEEN : **MATRIX INVESTMENTS LIMITED** a limited liability company having its registered office at HLB Crosbie & Associates, Top Floor, HLB House, Cruickshank Road, Nadi Airport and **WILLIAM ERNEST JAMES CROSBIE** of Nadi, Company Director.

PLAINTIFFS

AND : **BRETT LLOYD CONNOLLY** of 190 Oraha Road, Kumeu, Auckland 0810, New Zealand.

DEFENDANT

Solicitors : K Law for the Plaintiffs
AK Lawyers for the Defendant

R U L I N G

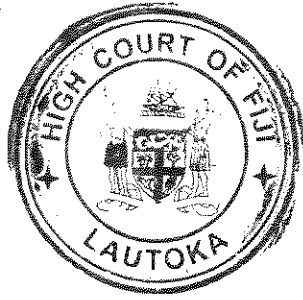
1. The background to this case is reported in my earlier ruling dated 18 November 2016 and reported in *pacii* in **Matrix Investments Ltd v Connolly** [2016] FJHC 1042; HBC147.2010 (18 November 2016).
2. The commission rate of 4% being offered by Professional Real Estate Agent (“PREA”) at Denarau Island to list and sell the property in question is a fair one. Mr. Narayan has obtained some other quotes from other reputable real estate agents in this part of Fiji who offer a slightly greater percentage, and one, with a slightly lower one.
3. It appears that the choice of real estate agent to list and sell the property is no longer an issue and I will say no more on this.
4. However, the plaintiff now sings a new tune. Ms Tabuakuro submits that her client would only agree to the listing and the sale of the property with any real estate agent provided the liabilities and the outgoings on the property are sorted out first between the parties. The defendant must share in these

burden which will have to be deducted from his (defendant's) share of the proceeds of sale.

5. The defendant submits that the proceeds from the sale can be deposited in court whilst the parties try to sort out how to apportion liabilities and outgoings. The defendant submits that, in any event, before the defendant can enter into any talk with the plaintiff regarding the liabilities and outgoings on the property, the plaintiff must first account in detail as to how the rental income from the property has been applied over the years. This is important because the parties had anticipated that the income derived from the rental of the property would be applied to service the bank loan account out of which the sale was financed. This is also important to the defendant because he has certain questions regarding certain particular "other" expenses to which rental income from the property was applied by the accounting firm of HLB Crosbie & Associates, which has been managing this investment. Incidentally, Crosbie, the second plaintiff, is a major partner in this same accounting firm.
6. The stance taken by the defendant is not unreasonable.
7. From where I sit, the stance being taken by the plaintiffs would appear to be an attempt to circumvent the defendant and avoid having to give an account. It is potentially a compromise on the professional ethical position of HLB Crosbie, particularly, considering the second plaintiff's stake in that firm.
8. I grant Order in Terms of the defendant's application and Order that Professional Real Estate Agent be engaged to list and sell the property in question and that the Deputy Registrar is to execute all documents necessary (in *lieu* of the plaintiffs and the defendant) with regards to the engagement of PREA. For the avoidance of doubt, PREA is being engaged on the

understanding that it is charging a 4% commission rate, as this court has been led to believe.

9. The proceeds from the sale of the property is to be paid into an interest bearing account of the Chief Registrar of the High Court of Fiji. Parties at liberty to apply further.



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Anare Tuilevuka
JUDGE
Lautoka
05 December 2016