

**IN THE HIGH COURT OF FIJI AT SUVA**

**CIVIL JURISDICTION**

**Civil Action No. 68 of 2012**

**BETWEEN**

**HANSONS SUPERMARKET LIMITED** a Company Incorporated in Fiji  
and having its registered office at Suva.

**PLAINTIFF**

**AND**

**MOHAMMED ZAID SHAKUR** of Suva, Manager.

**DEFENDANT**

**Counsel** : Mr. S. Singh for the plaintiff.  
Mr. K. Gounder for the Defendant.

**Date of Hearing** : 23<sup>rd</sup> January, 2017

**Written Submissions filed on** : 13<sup>th</sup> February, 2017

**Date of Judgment** : 02<sup>nd</sup> March, 2017

---

# JUDGMENT

---

- [1] It is averred in the statement claim of the plaintiff that it entered into an agreement to purchase vegetable oil, potatoes and onions from the defendant and paid NZ\$ 50,057.00 but the defendant only delivered goods to the value of NZ\$9600.00. In these proceedings the plaintiff seeks to recover the balance sum of NZ\$40,457.00.
- [2] In the statement of defence filed on 26<sup>th</sup> March, 2013 the defendant while denying averments in paragraphs 1 to 9 of the statement of claim averred that the plaintiff and the defendant had never entered into any agreement on the matters pleaded in the claim.
- [3] At the pre-trial conference the parties admitted the following facts:
1. The plaintiff is a limited liability company having its registered office at Suva, Fiji.
  2. The defendant is now a resident of Suva, Fiji and works as a manager.
  3. The plaintiff operates a supermarket business and is engaged in the sale of groceries, food items and other related items from its business premises at 8 Miles, Makoi, Nasinu.
  4. At all material times the defendant was the Managing Director of the company NZ Tutu Limited, a company incorporated in New Zealand and having its registered office at Darryl Pinny Chartered Accountant, Level 1, Guardian Trusthouse, 357 Main Street, Palmerstone North, New Zealand.
  5. On 07<sup>th</sup> July 2011 the company was struck off from the New Zealand Companies Register.
- [4] As per the minutes of the pre-trial conference following are the issues to be determined at the trial:
1. Did the plaintiff have a contract with the defendant?
  2. Did the defendant fraudulently obtain the sum of NZ\$40,457.00 from the plaintiff?
  3. Is the defendant liable to make repay the sum of NZ\$40,457.00 to the plaintiff?
  4. Is either party entitled to costs and if so, on what basis?

- [5] In cross examination the only witness of the plaintiff, its financial controller, admitted that the plaintiff's dealings were with NZ Tutu Limited. The defendant admitted in cross-examination that he was the only Director of NZ Tutu Limited. He also stated that the plaintiff had no agreement either with him or with NZ Tutu Limited. However, the evidence adduced by both parties clearly shows that there had been many transactions between the plaintiff and NZ Tutu Limited which fact had not been denied by any of the parties. The documents tendered by the witness for the plaintiff during the course of his testimony, very clearly show that all the transactions of the plaintiff had been with NZ Tutu Limited and not with the defendant personally.
- [6] The only evidence before the court on the question whether the plaintiff's agreement was with the defendant and not with NZ Tutu Limited is the oral testimony of the plaintiff's only witness Mr. Kant. There is no rule of evidence that every piece of evidence must be corroborated by other evidence. The question here is whether the oral testimony of this witness is sufficient for the court to conclude that the plaintiff's agreement was with the defendant personally and not with NZ Tutu Limited when the documents relied on by the plaintiff are contrary to the oral testimony of its own witness. As I have stated earlier all the vouchers, invoices and other documents transacted between the parties are in the name of NZ Tutu Limited which shows that the plaintiff's transaction had been with NZ Tutu Limited and not with the defendant.
- [7] The question then arises whether the directors and/or share holders of a company can be held personally liable for the acts of the company. In this regard it is important to consider the decision of the House of Lords in the case of **Salomon v Salomon** [1897] AC 22.
- [8] In that case Mr. Salomon sold his shoe business to a company which he had set up for the purpose under the Companies Act 1862. The formalities under the act were completed and the members of the company were Salomon, Mrs S and five of their children. As part of the consideration for the sale of the business to the company, Mr Salomon received fully paid up shares and also debentures to the value of £10,000 which he subsequently assigned to another party. In effect, the debentures meant that initially Mr Salomon and subsequently the assignee, were creditors of the business with first claim on the remaining assets should the company go into liquidation, as indeed happened. The company became insolvent and was unable to meet the full claim of the assignee or to meet all the claims of the other (unsecured) creditors. The liquidator attempted to hold



Mr Salomon liable for the debts of the company on a variety of grounds including that the whole transaction was a fraud on the company's creditors from which Salomon should not be allowed to benefit and that the company was simply his agent and therefore he should indemnify the company (and its creditors) with respect to the debts incurred by the company.

[9] The House of Lords held that on incorporation, a company becomes a legal entity separate and distinct from its shareholders and it is not the agent of those shareholders, not even if it is a one man company with one shareholder controlling all its activities.

[10] There is of course an exception to this rule. The courts are generally show willingness to lift the corporate veil where the device of incorporation is used for some illegal or improper purpose [*Merchandise Transport Ltd v British Transport Commission [1962] 2 QB 173*]. There is no such allegation in this matter.

[11] In view of the above no cause of action had accrued to the plaintiff to sue the defendant personally and the plaintiff's action is misconceived in law.

[12] For these reasons the court makes the following orders:

1. The writ of summons of the plaintiff is struck out and the action is dismissed.
2. The plaintiff shall pay the defendant \$3000.00 as costs of this action within 21 days from today.



  
Lyone Seneviratne

JUDGE

02<sup>nd</sup> March, 2017