

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. 202 of 2012

BETWEEN : CORE TECHNOLOGIES LIMITED

PLAINTIFF

AND : MUKESH KUMAR and ROSHNI DEVI KUMAR

DEFENDANTS

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr W Hiuare for the Plaintiffs.
Mr S Kumar for the First named Defendant.
Mr N Sharma for the Second named Defendant

Dates of Hearing : 27 and 28 November 2017

Date of Decision : 11 April 2018

JUDGMENT

1. The Plaintiff in its Amended Statement of Claim says:
 - (1) The Plaintiff is the registered owner of the chattels itemized in the Schedule A attached (chattels).
 - (2) The chattels were stored on 2 pieces of vacant land (the land) the registered owner of which was Shiu Kiran Narayan (Shiu).
 - (3) On 11 December 2008 Shiu "sold and transferred the properties to the Defendants and the Defendants became the registered owner thereon (sic).
 - (4) Per a verbal agreement, Shiu had 1 month from the date of settlement to clear the Plaintiff's chattels from the land.
 - (5) Circa 5 January 2009 while the Plaintiff was removing the chattels, the Defendants and/or their agents erected a fence around the land and barred the Plaintiff from removing the chattels.
 - (6) On 21 January 2009, the Plaintiff served a notice to the Defendants to release the chattels but the Plaintiff failed to do so.
 - (7) On 26 August 2011 the Plaintiff learnt that the Defendants had begun to sell the chattels as scrap metal.
 - (8) The chattels have been exposed to the weather since 2009 and have lost their value and are fit only for scrap metal.
 - (9) The estimated value of the chattels detained by the Defendants is \$225,000
 - (10) Wherefore the Plaintiff Claims:
 - (a) The Defendants return the chattels still in their possession or pay the value of the chattels.
 - (b) Damages for conversion.
 - (c) General damages.
2. The Defendants in their Statement of Defence say:
 - (1) The Defendants filed a writ for vacant possession in Nasinu Magistrates' Court Civil Action No 82 of 2009 when after waiting from 11 December 2008 till 5 August 2009, they saw no sign of the Plaintiff "taking its rotten steel".

- (2) Instead of pursuing its appeal against the decision in the said Court, the Plaintiff has filed another action claiming damages which is an abuse of the process of the court.
3. The Plaintiff filed a Reply to the Defence.
 4. The Minutes of the Pre-Trial Conference dated 17 January 2014, are a model of prolixity containing 8 Agreed Facts including the totally irrelevant place of residence of the Defendants and 22 Issues in Dispute to be determined.
 5. The hearing commenced with Mrs Shiu Kiran (PW1) giving evidence. She said she is a director of the Plaintiff. She owned the 2 properties. Her chattels included tractors and bulldozers. She went through Schedule A and said in 2008 all those chattels were lying on the lands. She sold the lands to both Defendants, the land held under certificate of title no 29783 to the First Defendant and that held under certificate of title no 24958 to the Second Defendant.
 6. Some of the chattels in the schedule belong to Jetpatcher Works (Fiji) Limited (Jetpatcher). PW1 asked the First Defendant for one month to clear the chattels from the land and he agreed. While PW1's workmen were clearing the land, the First Defendant chased them away. On 5 January 2009 he fenced both the lands and would not let them in. She sent letters to him. On 22 August 2011 the First Defendant started to cut the machinery into pieces and selling them as scrap. The Defendant impounded her possessions and she is claiming \$225,500.
 7. Under cross-examination by Counsel for the First Defendant, PW1 said she sold the properties to the Defendants and was given one month by them to remove the chattels. All her vehicles were immobile and did not have valid Land Transport Authority (LTA) registration. She agreed that the sale of properties only meant the land.

8. When cross-examined by Counsel for the Second Defendant, PW1 said the valuations were her personal estimates and not of a professional valuer and she had no expertise. None of the LTA Certificates were current as at 5 January 2009, the date of the cause of action. She did not have any documents in court to show the ownership on 5 January 2009. She personally was the owner of the 2 lands purchased by the First and Second Defendants. The First Defendant fenced both properties overnight. The Second Defendant never stopped her from entering the land and never stopped her from taking the vehicles away.
9. In re-examination, PW1 said she sold vacant land and not chattels. The vehicles were immobile and she will not be able to say what is their scrap metal value. She did not send any notice to the Second Defendant.
10. The second witness was Mohammed Farook (PW2). He worked for the Plaintiff as a vehicle driver. In 2009, he with others tried to remove the chattels. The First Defendant put a fence round the land and threatened them, so they came back.
11. Under cross-examination by the First Defendant's Counsel PW2 said he went in January 2009, as advised by the Plaintiff to remove the chattels but was not allowed by the First Defendant to enter.
12. The final witness was Gyan Prasad (PW3). He knows the First Defendant and resides opposite his house. In 2011 he heard the noise of cutting of machines and saw the First Defendant with his workers cutting the machines in his yard and loading in one truck.
13. When cross-examined by Counsel for the First Defendant, PW3 said it was in August 2011 and at that time there was no house on the land. With that the Plaintiff closed its case.

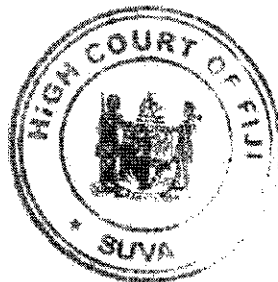
14. The First Defendant opened his case the next day. The First Defendant (DW1) now gave his evidence. He asked Narayan (a director of the Plaintiff) about the junk on the land. He informed DW1 that as soon as he got the offer letter he would clear all the stuff. For one year they did not remove the stuff. After one year he (DW1) cleared the stuff and built his house. He gave them various time lines to clear the chattels but they did not. He said the Plaintiff's claim is made up stuff. He never saw the Plaintiff's sign nor the LTA number on any of the vehicles. Nothing in Schedule A was on the land.
15. Under cross-examination by Counsel for the Plaintiff, DW1 said he fenced the area more than one year later. The chattels was junk; it was scrap. The order given by the Nasiru Court says he could cut and sell.
16. Under cross-examination by Counsel for the Second Defendant, DW1 said he did not stop the Plaintiff from removing the machinery. There was a verbal agreement to remove all machineries within a month's time. With that the First Defendant closed his case.
17. The Second Defendant now opened hers. The Second Defendant (DW2) said the First Defendant is her husband but they are separated. She and her husband gave them (Plaintiff) one month to remove the machineries. With that the Second Defendant closed her case.
18. Counsel for the Plaintiff now submitted. He said the Defendant fenced the area and the Plaintiff could not remove the chattels.
19. Counsel for the First Defendant said the Defendants' solicitors gave the Plaintiff time to remove the machineries but they did not. The Plaintiff has not proved its claim.

20. Counsel for the Second Defendant said his client puts all the responsibility on the First Defendant. The valuation is not fit for the assessment of damages. The Nasinu Magistrate's order requires PW1 to remove the machinery.
21. The Plaintiff's Counsel in his reply said the order did not say to cut and sell the chattels.
22. At the conclusion of the arguments I informed that I would take time for consideration. Having done so, I shall now deliver my decision.
23. The facts of the case are contained within a small compass. The Plaintiff contends that while it was removing the chattels circa 5 January 2009, the Defendants erected a fence around the land and barred the Plaintiff from removing the chattels.
24. The Defendants contend that they waited for 1 year but there was still no sign of the Plaintiff removing the chattels. Indeed it was the cross examination by the Plaintiff's Counsel of the First Defendant that clearly established the fence was erected more than one year later.
25. Further supporting the Defendants' case was the evidence of the Plaintiff's own witness Prasad (PW3) who testified that he saw the First Defendant in 2011 cutting the machineries in his yard and under cross examination that that was in August 2011.
26. Consequently I am satisfied that the Plaintiff's claim has collapsed for the simple reason that the evidence shows the Plaintiff never removed the chattels within the agreed one month period for reasons that the Plaintiff never even attempted to say. It does not stand to reason that the Defendants would have stopped the Plaintiff from removing the chattels. On the contrary the Court is impelled to conclude that the Plaintiff abandoned the chattels on what had now become the Defendants' land leaving the Defendants with no alternative but to remove the same. The Defendants cannot be faulted for running out of patience. Indeed it is not plausible to allege that the Defendants had attempted to

stop the Plaintiff from removing the chattels. Why should they? The chattels, from, the evidence, were no better than junk or scrap.

27. So I shall now turn to the claim for the value of the chattels. The evidence shows not all the chattels belonged to the Plaintiff. Some of them, indeed, belonged to another legal entity, Jetpatcher. In any event the Plaintiff provided no cogent evidence of what their value were. The burden of proof throughout the case rested on the Plaintiff and the Plaintiff failed utterly. Merely printing a Schedule of the chattels does help the Plaintiff at all, when no evidence of their valuation by an independent expert was provided. Self-serving statements by the Plaintiff's witnesses are not evidence that this Court can accept. I find and I so hold there was no evidence that the chattels were on the land nor of their value.
28. In the result, the Plaintiff's claims for return of the chattels, for damages for conversion and for general damages are hereby dismissed with costs summarily assessed at \$1,000 to be paid by the Plaintiff to the First Defendant and at \$500 to be paid by the Plaintiff to the Second Defendant.

Delivered at Suva this 11th day of April 2018



David Alfred
JUDGE
High Court of Fiji