

In the High Court of Fiji at Suva
Civil Jurisdiction
Civil Action No. HBC 255 of 2016
Between

Harry Whitcombe
Plaintiff
And
Marry Molly McDonald
Defendant

Counsel: Mr Diven Prasad for the plaintiff
Mr A.Chand for the defendant

Date of hearing: 27th October,2017

Date of Judgment: 14th March,2018

Judgment

1. The plaintiff states that on 17th March, 2016, the defendant intentionally set fire to his dwelling house on CT 25607 in Veisari, Lami. The fire completely destroyed his house and all his belongings. He claims a sum of \$120,000.00, as costs of rebuilding his house and \$47,195.00, as value of the items destroyed by fire.
2. By summons filed on 21 December,2016, the plaintiff moved for leave to enter judgment in default against the defendant and damages to be assessed. The defendant, in her affidavit in opposition admitted that she set fire to the plaintiff's dwelling house and it was completely destroyed with all belongings, but denied the act was intentional.
3. On 21st July, 2017, Mr Chand, counsel for the defendant agreed that judgment in default be entered. I fixed the matter for hearing for assessment of damages.

4. *The hearing*

a) PW1, (*Shivneel Prasad, Investigating Officer, Lami Police Station*)

PW1 said that he investigated the incident at the plaintiff's house. He was the first to arrive at the scene. The house was gutted. The neighbours told him that the plaintiff's house had two bedrooms. He produced his report. He did not note the cost of the actual damage. The defendant was charged. She was referred to St Giles.

In cross-examination, he said that the house was on piles. When the Fire Authority came, the house and belongings were destroyed. The wood cannot be used. Some of the pine poles were destroyed by fire, not all. The tool room and wash area downstairs were not destroyed, as depicted in the photographs contained in the plaintiff's exhibits.

b) PW2, (*the plaintiff*)

PW2 produced his certificate of title and a newspaper article, which reported that the defendant was charged on account of arson and released on a bail bond. He also produced a letter from the National Fire Authority of 2 September, 2016, stating that the structure and contents of his house were completely destroyed. He said that it was a two bed roomed double storey wooden house on piles. It was built in 2003. There was a bedroom and kitchen on the bottom floor. The rest was open. He could not recover any items. All were completely destroyed. His nephew, 3 year old son and house-girl were in the house when it was burnt.

He claims \$ 47,195.00 for items lost. The receipts for purchase of these items were destroyed in the fire. He had an antique dining table for six, valued at \$5000.00 and two ancient oil paintings worth \$2000.00. He produced a Valuation Report from Landprop Valuation and a Quotation from Grey Projects Designs Limited, his Designer/Builder for the construction of a new residence. He has not completed rebuilding his house. He has taken a loan of \$ 77,500. He is claiming \$ 120,000 to cover the interest payment on the loan.

In cross-examination, it transpired that he had an offer letter from Westpack regarding the loan. He said that he does not have his Loan Agreement with the Bank. The Articles of Agreement between Grey Projects Designs Limited and himself did not contain the Plan of the proposed house. There is no specification of the material and labour component in the Articles. He did not have receipts of purchase of material nor a record of the monies he had spent on building the new house. He said that he did not ask his Contractor for a record of expenditure.

The proposed house has three bedrooms, while his house had two. He agreed that the bedroom and toilet on the ground floor were not destroyed. The interior was destroyed. Some of the pine poles were saved. He had not kept a record of the amount he has spent so far on building his house.

It emerged that he had estimated the value for the table, paintings, drawers and cutlery. It was put to him that his valuation for cutlery and other items was excessive. He denied that he had exaggerated the value of the items. His fridge was 9 years old and estimated at \$ 900. He said that he had branded shoes worth \$1000. His electrical tools were destroyed. The Govt gave some schooltext books, the others he paid for. He had two desk top computers and a laptop. His nephew paid for the laptop. The desk top was given to him. Six people were living in his house, including his four children and nephew.

c) PW3, (*John Hailey Whitcombe, the plaintiff's nephew*)

PW3 said that he was at his uncle's house on 17th March, 2016, when a fire destroyed the house. There were two bedrooms at an elevation. The house was completely destroyed. All his clothes, shoes, study docs, laptop, hard drive and mobile phone were destroyed. Lot of old things he saw in his grand parents home such as a table, paintings and cutlery were destroyed. The structure of the toilet and bathroom on the ground floor was intact. Six people stayed in the house.

This witness was not cross-examined.

- d) PW4, (*Rajesh Prasad Lal, Director, Cool Investments Limited*)
PW4 said that his father had visited the site. He gave a quotation to build a new house according to the Plan. The estimated cost was \$112,785, 68. The copy of the Plan was destroyed. He could not recall how many bedrooms were designed. He concluded his evidence in chief stating that he did not build the house. He only gave a quotation. This witness was not cross-examined.
- e) PW5, (*Salacieli Lomaiviti, Registered Valuer, Landprop Valuation and Report*)
PW5, in his evidence said that he saw the damage caused to the plaintiff's house. He took measurements of the living areas and tool room. He valued the land at \$90000; the structural and other improvements at \$ 70000. The replacement value of the house was \$ 70000. The Plans were given to him of the house.
In cross-examination, he said that it would cost \$ 70000 to complete the house.

The determination

5. The plaintiff claims a sum of \$ 120,000.00, to rebuild his house admittedly destroyed by a fire caused by the defendant.
6. The plaintiff in evidence in chief said that the construction of his house was near completion. He said that he had taken a loan of \$77,500.00 from Westpack Bank. He claims \$ 120,000.00 to cover the interest on the loan.
7. The plaintiff produced in evidence an offer letter from Westpack Bank to loan him \$77,500.00. He produced his Agreement with PW4, his Designer/Builder. The loan Agreement with Westpack Bank was not produced nor the Plan of the house. It transpired that the Plan contemplated three bedrooms, while the house that was destroyed had two bedrooms. The plaintiff had no record of the expenditure incurred in the construction.
8. PW4 said that he had not built the house. He only gave a quotation for the replacement value of the house in a sum of \$ 70000.

9. The plaintiff has not produced any cogent evidence to substantiate his evidence that he is building a house and taken a loan from Westpack Bank.

10. In the circumstances, in my view, the plaintiff is entitled to the replacement value of the house, as contained in the Valuation Report given by PW5. The replacement value of the house is \$ 70000.

11. The next claim is for the destroyed items in the house. His list reads as follows:

i)	<i>Cutlery</i>	\$2,000.00
ii)	<i>Food</i>	\$400.00
iii)	<i>Fridge</i>	\$900.00
iv)	<i>Two Burner Stoves</i>	\$300.00
v)	<i>Dinner Table (Heritage)</i>	\$5,000.00
vi)	<i>Two Painting Families Heirloom</i>	\$2,000.00
vii)	<i>Lounge Suit</i>	\$1,000.00
viii)	<i>Glass Coffee Table</i>	\$600.00
ix)	<i>Two Big Chinese Vase</i>	\$500.00
x)	<i>Our Lady Statue (Prayer)</i>	\$300.00
xi)	<i>King Size Bed</i>	\$2,000.00
xii)	<i>Bunk Bed</i>	\$800.00
xiii)	<i>Dressing Table Family Heirloom</i>	\$2,000.00
xiv)	<i>Two Chested Drawers</i>	\$2,000.00
xv)	<i>Children's Clothes</i>	\$1,000.00
xvi)	<i>Shoes</i>	\$1,000.00 NZD
xvii)	<i>Damaged Tools</i>	\$2,000.00
xviii)	<i>School Uniforms</i>	\$1,000.00
xix)	<i>School Sandals</i>	\$400.00
xx)	<i>School Text Books</i>	\$1,000.00
xxi)	<i>Washing Machine</i>	\$800.00
xxii)	<i>Electric Kettle</i>	\$45.00
xxiii)	<i>Electric Fry Pan</i>	\$500.00
xxiv)	<i>Computer Home</i>	\$2,000.00
	<u>Documents</u>	
xxv)	<i>Great Grand Fathers Birth Certificate</i>	
xxvi)	<i>Whitecombe Pedigree</i>	
xxvii)	<i>Three Passports</i>	\$150.00 NZD
xxviii)	<i>Three Mobile Phones</i>	\$150.00

<u>Linen</u>		
xxxi) Pillow case	}	
xxxii) Mattress covers	}	
xxxiii) Towels	}	
xxxviii) Tea Towels	}	
xxxix) Curtains	}	
xi) Blankets	}	\$2,000.00
xii) Hockey equipment	}	\$350.00

<i>Total Costs:</i>		\$ 47,195.00
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12. The plaintiff said that he had estimated the value of these items, including the cutlery and paintings.

13. Mr Chand, in cross examination put it to the plaintiff that he had has exaggerated the value and quantity of the items he claimed, in particular the cutlery, linen, paintings, table chest of drawers shoes, fridge, frying pan and computers. He also pointed out that the Govt provides school text books

14. In my view, clearly the plaintiff has inflated the value of many items.

15. I award the plaintiff a sum of \$ 35000.00, as the discounted value of the items destroyed.

16. The plaintiff is entitled to a total sum of \$105,000(70,000.00 + 35,000.00)

17. **Order**

- a. The defendant shall pay the plaintiff a sum of \$ 105,000.
- b. I make no order as to costs.



A.L.B. Brito-Mutunayagam
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Judge
14th March, 2018