

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 232 of 2016

BETWEEN : HABIBUL RAHIMAN

PLAINTIFF

A N D : NIYAZ ASHAD ALI and
REHAN AZIM KHAN

DEFENDANTS

Appearances:

Appearances:	Babu Singh & Associates for Plaintiff N/A for Defendants
Date of formal Proof:	11 March 2019
Date of Ruling for Formal Proof:	4 July 2019

R U L I N G

1. This claim arose out of an agreement which was executed on 12 July 2016 between the plaintiff and the defendant for the sale by the plaintiff and purchase by the defendant of a piece and parcel of land described in Instrument of Tenancy No. 6365 C/N139 situate in the Tikina of Vitogo in the Province of Ba and containing an area of 3.2994 Ha which is covered under cane contract No. 00139 – Lovu Sector.

2. The purchase price stipulated under clause 2.1 of the agreement was \$200,000 (two hundred thousand dollars only). There is no provision for a deposit. Clause 4.2 stipulated that settlement shall be effected within 90 days from the date of execution of the agreement. Clause 7.1 stipulates that the vendor will give vacant possession to the purchasers on settlement date.
3. According to the plaintiff, he sold that property to the defendants excluding all spare parts on the property.
4. The spare parts are for Motor Vehicles, trucks, axle parts.
5. I gather that the plaintiff used to run his business on the property, the exact nature of which is unclear to me at this time. I understand though that the spare parts are all related to his business.
6. The plaintiff's and the defendants' common solicitor was Natasha Khan & Associates.
7. Sometime leading up to the date of settlement, the plaintiff said he had travelled from Australia to Fiji to attend to settlement.
8. The arrangement was that both he and the defendant would, on the date of settlement, meet at NKA's office where the formalities of settlement would be attended to, which, of course, will involve the handing over of the cheque in exchange for the title and the registrable instrument of transfer.
9. Also, the arrangement was that after formal settlement, the plaintiff was to go to the property and remove all his spare parts and vehicles.
10. However, prior to date of settlement, the defendant approached their common solicitor in Lautoka and paid her the consideration of \$200,000-00 by a cheque. He then went to the property and put up security guards around the compound.
11. When the plaintiff went to the solicitor's office for settlement, he was told that the cheque had been paid. Later, after having the cheque cleared by *special answer* at

the bank, the plaintiff then went to the property, only to find that he was denied access to remove the items.

12. Immediately after that, the defendant then went to the property and locked the gate to prevent the plaintiff from removing the vehicle parts and also accessories inside the house.
13. The plaintiff had come to Court to seek an Order that the defendant open the gate and release the vehicle parts and items from inside the house.
14. Some spare parts were removed thereafter due to Court Orders. Others were not recovered by the plaintiff. The plaintiff said only about the 20% of items have been removed.
15. The parts and items which had been left back at the property are all set out in the statement of claim. In his evidence, the plaintiff puts the total value of these items at \$210,420-00. Of these, about \$164,600-00 worth of items have since been recovered. He puts the total value of yet-to-be-recovered items at \$45,820-00.
16. The plaintiff also tenders a list of these items with declared value (PEX9).
17. The plaintiff said these items were all purchased overseas. He exhibits and marked PEX2, PEX3, PEX4, PEX5, PEX6, PEX7 a number of related tax invoices and bills of lading and customs clearance documents (PEX8).
18. The plaintiff claims \$45,820-00 for costs of unrecovered items plus special damages (for which I granted leave on the date of hearing to amend the claim accordingly) of security personnel he has had to hire to stand and keep watch at the property to ensure that the items are not removed or dissipated. For the latter, he has produced invoice but estimates his costs at \$15,000-00.
19. The defendant was served but has not appeared.

ORDERS

20. Judgement in the sum of \$45,820-00 in favour of the plaintiff.
21. Special Damages in the sum of \$15,000-00.
22. Costs which I summarily assess at \$2,000-00.



Anare Tuilevuka
JUDGE
Lautoka