

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 332 of 2017

BETWEEN: **RAJNESH NARAYAN LALA** of 7 Verrier Road, Namadi Heights,
Suva, Fiji, Business Manager

PLAINTIFF

AND: **PROPERTY HOLDINGS LIMITED** a company incorporated under the
Companies Act having its registered office at 94 Waimanu Road, Suva,
Fiji

1ST DEFENDANT

AND: **PADAM RAJ LALA** of 14 Ragg Avenue, Tamavua, Suva, Fiji,
Company Director

2ND DEFENDANT

AND: **RAMESH CHAND LALA** of 60 Verier Road, Namadi Heights, Suva,
Fiji, Company Director

3RD DEFENDANT

Counsel : **Plaintiff: Mr Nand. A**
 : **Defendant: Mr Tuitoga. T**

Date of Hearing : **04.06.2020**

Date of Judgment : **03.07.2020**

Catch words

Employment- Company Secretary- work without an employment contract- no remuneration agreed- quantum meruit- benefit to employer- at the expense of Plaintiff- unjust not to pay – Sections 103-109 of Companies Act 2015.

Cases referred in judgment

1. *Benedetti v Sawiris & Ors* [2010] EWCA Civ 1427 (16 December 2010)
2. *Hassan v Transport Workers Union* [2005] FJCA 52; ABU0050J.2004 (29 July 2005)
3. *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669
4. *Kleinwort Benson Ltd v Lincoln CC* [1999] 2 AC
5. *Vedatech Corporation v Crystal Decisions (UK) Ltd. & Anor* [2002] EWHC 818 (Ch) (21st May, 2002)
6. *Banque Financière v Parc* [1999] 1 AC 221

7. Way v Latilla [1937] 3 All ER
8. Kuwait Airways Coporation v Kuwait Insurance Company SAK [2000] Lloyd's Rep IR 678

Cases submitted in written submissions

1. Hassan v Transport Workers Union [2005] FJCA 52; ABU0050J.2004 (29 July 2005)
2. Cravan v Canons Ltd [1936] 3 All ER 936

JUDGMENT

INTRODUCTION

1. Plaintiff was appointed as secretary to the first Defendant in 2012, but was never paid for his work till he resigned. First Defendant is a family owned business and his mother was one of the four Directors and also equal shareholders. Second and third Defendants were Directors of the first Defendant, deny any payment was due for the Plaintiff as secretary of the Defendant. According to Defendants the work of company secretary was an honorary position. Plaintiff engaged himself in the work as company secretary as well as other operational functions (eg Property Manager) while he was full time engaged in another business. There was no complaint about his work and Plaintiff at no time requested a payment in writing to the fist Defendant, though he was present in board meetings. Plaintiff said that he verbally requested for payment for his work. During his tenure first Defendant had declared inaugural payment of dividend and paid dividends annually thereafter. There was no denial of Plaintiff's work as company secretary and that he had done so diligently, and honestly, and first Defendant had the benefit of his services. Plaintiff had devoted his time and energy for the best interest of the company and its shareholders without receiving any return for his services. Secretary of a company is a statutory position that attaches certain legal obligations which can expose for civil and criminal prosecution. Defendants' contention was that position of secretary was honorary, but the position was never called as 'honorary secretary' which was more opt for religious or charitable organization. There was no evidence that Plaintiff had volunteered to work without remuneration, when he could gainfully employed with a business. He had worked without a salary for a long time, but that cannot be used to deny payment for his services. Not to agree for a fixed sum would have benefitted both parties as both were able to work relaxed than an employment through fixed terms, but such services, cannot be taken as free services or labour offered. As neither side offered evidence to quantify the amount in *quantum meruit* court needs to assess an amount 'reasonable participation' basis, from the evidence presented. Plaintiff had worked independently as company secretary and had even acted in the best interest of the company in order to obtain higher rentals for the properties owned by fist Defendant. He had even collected rents and honestly worked wearing several hats at the same time with regard to fist Defendant. It would be wholly unjustified, not to pay such a person who had devoted his time and energy for the betterment of the first Defendant

without any reward. His work needs to be compensated adequately and I award the sum claimed as a global sum rather than monthly payment for services rendered by him. The claims for misrepresentation and loss of opportunities against second and third Defendants, are struck off.

FACTS

2. By Amended Statement of Claim filed on 11 .3. 2019 Plaintiff *inter alia*, sought the following orders:
 1. Judgement in the sum \$45,000.00;
 2. Damages for loss of opportunities and misrepresentation.
 3. Interest on the judgement sum under the Law Reform (Mis Provisions) (Death and Interest) Act;
3. The agreed facts as set out in the Pre-Trial Conference Minutes filed on 13 March 2020 are as follows:
 - a. The 1st Defendant is a duly incorporated company registered under the Companies Act 2015.
 - b. The 1st Defendant is the registered owner of the properties comprised in CT No. 10531; CT No. 9487; CT No. 9280 and CT No. 9488.
 - c. The 2nd Defendant was a Director of the 1st Defendant at all material times.
 - d. The 1st Defendants registered office is situated at 94 Waimanu Road, Suva.
 - e. The 1st Defendants property being CT No. 9280 is situate at Waimanu Road, Suva and erected on it is a two three storey building. The building has 5 shops, 3 offices and 3 retail spaces which are all rented out.
 - f. The 1st Defendants property being CT No. 10531 is situated at Robertson Road, Suva and erected on the property is a two storey building.
 - g. The building erected on CT No. 10531 had 1 factory and office; 1 supermarket and 1 retail space which was burnt down sometimes in December 2017.
 - h. The 1st Defendants property being CT No. 9488 comprises of 50 acres of vacant land and is unattended.

4. Plaintiff's first claim was for unjust enrichment against first Defendant. Plaintiff alleges that he was the only person engaged with operational aspects of the business of first Defendant. Two of the Directors lived abroad, and were not involved in the day today operation and or management of the properties belonged to the first Defendant.
5. Plaintiff had managed the properties with increase of rentals and or collection of the same from entities diligently and banking them timely.
6. In the statement of claim Plaintiff said if a property manager was employed for the work he did that would have cost first Defendant a minimum of \$10,000 p.a.
7. In the circumstances first Defendant had enriched unjustly, hence Plaintiff is seeking a sum of \$45,000.
8. The claims against the Second and third Defendants are based on the alleged representations they made to the Plaintiff regarding the position of Company Secretary. The Plaintiff says that the 2nd and 3rd Defendants, made false representations that he will be adequately compensated. He alleged that Directors as only shareholders, through non payment of any compensation to Plaintiff.
9. In the statement of defence second and third Defendants allege that it was the Plaintiff who sought the position of Company Secretary in order to gain experience in the work of a legal entity.
10. Defendants state that Plaintiff was never appointed as a property manager of the company. Hence deny that any payment was due to Plaintiff for his services.
11. Plaintiff gave evidence and marked documents from P1 to P19. There was no dispute as to most of the facts except as to assurance of payment for his services.
12. Second Defendant gave evidence through a use of popular free software application commonly used for such gathering of oral evidence from remote location. Second Defendant said that he allowed Plaintiff to work as company secretary for him to gain experience. He denied requesting Plaintiff to assume duties as Company Secretary.
13. The Plaintiff's evidence said that he was employed by his mother's business and earns a monthly salary from that. He was employed in his mother's business from 1989 and had nor higher educational qualifications other than secondary school qualification up to form five.
14. Plaintiff became a bank signatory to first Defendant before he was appointed as Company Secretary.

15. There was no employment contract between parties. No payment was made for Plaintiff. There was no job description or terms of employment issued. He said that he worked for at least two hours a day for the first Defendant in various tasks from first Defendant as there was no person employed for first Defendant.
16. He had resigned as Company Secretary by letter dated 20.2.2017. In the resignation letter, he make no claim or mention of remuneration and he said that was separately dealt by a solicitor.
17. He said that he resigned on his own accord, due to some disagreements with the board of directors. He produced some evidence that his increase of rent for a premises was nullified by a letter of second Defendant. According to the Plaintiff this was due to said Defendant having a factory in the said building and did not want to pay increased rental for his private factory.
18. Plaintiff was the only officer of first Defendant who had regularly dealt with the business and taken care of matters such as removal of caveats, obtaining legal services, accounting services were done by a private entity.
19. According to the Plaintiff first Defendant was able to declare dividend for the first time after he assumed duties as company secretary and in 2012 it was \$10,000 per shareholder and in 2013 it was increased to \$15,000 per shareholder. Dividends in 2014 was \$18,000 per shareholder. Dividends in 2015 was \$18,000 per shareholder. Dividends in 2016 was \$18,000 per shareholder. So for his tenure as company secretary five consecutive years an accumulate sum of \$79,000 was paid as dividends for a shareholder.
20. The Second Defendant, in his evidence admitted the appointment of first Defendant as Company Secretary. According to him Plaintiff approached the Second and Third Defendants and expressed his desire to act as the Company Secretary.
21. According to him, Plaintiff had attended a company meeting for his mother and was appointed as company secretary as there was a vacancy for that. He father said that position of Company Secretary was and has always been an unpaid honorary and voluntary position.
22. Directors were not paid remuneration and Plaintiff was never authorized to act as property manager of first Defendant.
23. Dividends in 2019 was \$45,000 per shareholder. Dividends in 2018 was \$25,000 per shareholder.
24. Payment of dividends were approved by Directors taking into account solvency and availability of funds.

25. Plaintiff collected rents and Director also collects rent. A person from accounting company is presently the Company Secretary. Accounting firm is paid for their services.

ANALYSIS

26. Second Defendant admitted that Plaintiff worked for the first Defendant. Plaintiff was appointed as company secretary from 2012 by the board of directors of the first Defendant. He had attended to works of company secretary as well as chief and main operational tasks of the functions of the first Defendant. He was not required to be physically present himself to the directors and/or shareholders frequently. He did not have a particular office space to be present daily, but absence of such formal attributes cannot deny payment for services rendered for a claim under unjust enrichment.
27. In the written submissions filed by Defendants relied on Court of Appeal determination of employment of taxi drivers as independent contractors , under particular statute under Employment Law in *Hassan v Transport Workers Union* [2005] FJCA 52; ABU0050J.2004 (29 July 2005) . This decision has no relevance to present action and cannot be applied to this case. It was not a case where unjust enrichment claim was made, for claim based on remuneration of statutory position. Hence it cannot be applied.
28. I was not provided with local authorities on the issue of unjust enrichment and claim based on services rendered under that.
29. There was no dispute the Plaintiff worked for first Defendant as company secretary and also instrumental in increase of rental income of the first Defendant and also and or duration of work he devoted on daily basis. He could do other work and generally about two hours a day was devoted to work of the first Defendant.
30. Plaintiff's claim against first Defendant is not based on statutory requirements such as provident fund payments and or leave, but a common law claim based on unjust enrichment.
31. In *Benedetti v Sawiris & Ors* [2010] EWCA Civ 1427 (16 December 2010) held,
“The law of restitution provides remedies in particular situations where there has been some unjust enrichment of a party but there is no liability in contract or tort or for breach of trust (see generally *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 and *Kleinwort Benson Ltd v Lincoln CC* [1999] 2 AC 349). One such remedy is the award by way of quantum meruit (which literally translated means "as much as he deserves"). A quantum meruit may be awarded where **services have been rendered but there is no contract**

establishing the price to be paid for those services. If it is awarded, the court has to place a value on the services that have been provided.”(emphasis mine)

32. The basis of claim for unjust enrichment, does not depend on contract of employment or contract for employment.
33. The absence of formal recruitment process is in no way affect the claim for unjust enrichment. It was the first Defendant through its board decision that appointed Plaintiff as company secretary and they were free to adopt any process that they desire.
34. Plaintiff was not given a job description and again this will not affect a claim for unjust enrichment when services were already rendered for a long period of time, at the expense of Plaintiff.
35. The fact that Plaintiff had freedom to do any other work cannot deny a claim based on unjust enrichment. These were the manner parties voluntarily accepted and continued for five years. It is wrong to consider Company Secretary as a rubber stamp of a company considering civil and criminal liabilities attached to said position, in the Companies Act 2015.
36. The claim for unjust enrichment for services supplied by Plaintiff was not based on contract and there was no need to prove a concluded contract between parties for the said claim.
37. The first claim of the Plaintiff is unjust enrichment against first Defendant. Plaintiff relied on verbal promise or estoppel and or misrepresentation by conduct of the Directors of the first Defendant for his claim for \$45,000.
38. The only witness called by the Defendants was second Defendant who gave evidence from abroad through use of a software application, specialized for video communication.
39. I quote following observations made by UK courts nearly two decades ago, even before such software applications were invented. Taking evidence through video links were objected and court held that the cost effective and pragmatic approach was nee of the hour. In *Vedatech Corporation v Crystal Decisions (UK) Ltd. & Anor* [2002] EWHC 818 (Ch) (21st May, 2002) Jacob J held,

“Vedatech's only other witness was a Miss Minkler. She gave evidence by videolink from Seattle. I found that to be perfectly satisfactory, though Mr Robert Hildyard QC for Holistic did not completely agree. The expense of

bringing such a minor witness here would have been disproportionate, even if, as was not the case, she had been willing to fly.”

40. By allowing video communication through software, it was possible to continue with the trial when both countries were ‘lock down’ due to pandemic. In my mind even under normal circumstances unless there are special reason , a witness who is abroad can give evidence through video communication application, at a fraction of the cost and inconvenience to witnesses and also to party.
41. Defendant’s position was that company secretary was an honorary position and Articles of the first Defendant sated that. No such an Article of the Company was ever disclosed and or marked at the hearing and this fact was not even stated in the written submissions.
42. In contrary, Companies Act 2015 as well as repealed Companies Act had expressly made provisions in the law to make the position of Company Secretary a paid position.
43. Companies Act 2015 imposes civil obligations on to ‘officers of company’ which includes Company Secretary. Sections 104 of the Companies Act 2015 states as follow

“A director or other officer of company must act in the way director of officer considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole”
44. So the position of Company Secretary is no longer a rubber stamp as contended by second Defendant in his evidence. It is a responsible position and carries with it number of obligations as discussed below.
45. Section 105 makes it mandatory for company secretary to make independent judgment and this is in derogation of any agreement and or Articles of the company. This is far from what Defendants’ contention of the functions of company secretary.
46. So it is clear that position of company secretary attaches certain obligations and or independent judgment, as opposed to being a rubber stamp of the directors. Plaintiff had in fact acted in good faith in increasing rentals for a commercial entity, but his decision was vetoed. Such an increase of rentals, would also affect a business of second Defendant who was a director of first Defendant. This was evidenced from marked -document ‘P16’ emails of second Defendant. He admitted that he had a factory in the same premises where he cancelled increase of rentals requested by Plaintiff to a tenant in same premises.
47. Section 106 of Companies Act 2015 obliges company secretary to exercise reasonable care, skill and diligence. Even if such a judgment of company secretary is ‘business

decision' it needs to fulfill requirements under Section 106(3) of Companies Act 2015 hence should be in good faith for a proper purpose, devoid of personal interest , should inform other officers of company and should be in the best interest of company.

48. The above mentioned are some of the obligations of company secretary, contained in Sections 103-109 of Companies Act 2015. They can even result in civil litigation against Company Secretary.
49. In the circumstances, the position held by Plaintiff as company secretary, irrespective of company being a family business entity, created certain obligations that can expose Plaintiff for civil litigations, hence cannot be considered as honorary position.
50. The fact that parties did not agree to formal rates of payment for services cannot be considered as offer of free services. There is nothing free in his world as someone has to pay for that and this is more so when it relates to labour or services obtained for long period of time without any sort of payment. Plaintiff in his evidence was clear that he was not a 'slave' hence cannot be treated in such manner without payment.
51. Plaintiff was truthful and his evidence and he said that he requested for remuneration but this was dealt in lukewarm manner by the second and third defendants who were his uncles. In such a situation a person like Plaintiff would not seek confrontation, or litigation unless as a last resort.
52. Second Defendant who held directorships in both private and public entities should treat a person such as Plaintiff in reasonable manner. It is wholly unjust to obtain services of Plaintiff for such a long period without any payment. His contention on experience gained by Plaintiff for working as company secretary, cannot hold water.
53. The contention that Plaintiff sought position as company secretary was far from truth. If so, there was no reason to function for five years to gain experience, without any sort of payment. What is the experience in collection of rent and other operations of business, that needed five years? His conduct in the business of the first Defendant clearly indicated that he had functioned as the only person who regularly engaged in the operation of business of the first Defendant, while the only shareholders and directors were not involved in the operational aspects.
54. Though the company may not needed full time secretary or any other employee, that was a decision left to the management of the first Defendant. Plaintiff had successfully and honestly collected money and banked them properly and had also instrumental in obtaining market rate rentals as income for the first Defendant. He was also involved in some legal issues such as removal of caveat. All these indicate that Plaintiff was actively involved in the daily operations of the first Defendant, as

- the secretary of company and Defendants had allowed and had benefited from his services.
55. Plaintiff who was not a shareholder of the first Defendant could not even receive dividend declared from profits for the first Defendant. So it was unfair not to pay an officer of company when he was remunerated in any form, but had statutory obligations attached to the position he held. These are all civil obligations imposed on Plaintiff when he held the position under Companies Act 2015.
 56. Section 112 of the Companies Act 2015 makes company secretary criminally liable for breaches of Sections 104,105,107,108, or 109 of said Act. So the position of company secretary requires adequate remuneration and cannot be implied as honorary position, as contended.
 57. The directors of first Defendant who were also equal shareholders of the first Defendant had not sought any remuneration, but this was not a reason to deny Plaintiff's claim based on unjust enrichment. Plaintiff was not a shareholder and carried out a responsible position of the company which exposed him to civil and criminal liabilities without any remuneration for five years. Directors who were the only shareholders obtained their share of dividends, while Plaintiff was not paid at all.
 58. Plaintiff in evidence said that he requested for payment, but this was denied by second Defendant. As stated earlier contention that Plaintiff sought the position of company secretary, for experience cannot be accepted on the analysis of evidence.
 59. In my judgment on the analysis of evidence it was not proved on the balance of probability that Plaintiff was misled or any misrepresentations were made by Defendants. So the claims against first and Second Defendants for misrepresentation cannot succeed. But this would not nullify the claim for unjust enrichment.
 60. Though it would be rare to seek a claim for unjust enrichment, in an employment with a legal entity such as first Defendant, there is no bar for such a claim. The rules regarding unjust enrichment or restitution and *quantum meruit* are wide enough to capture unjust use of labour or services of a person.
 61. Plaintiff had resigned from the position of company secretary due to some issues unrelated to non payment, but having resigned, on 20.2.2017 sought payments through a letter of demand from solicitors on 22.2.2017.
 62. Plaintiff in his evidence under cross-examination said that he allowed the solicitors to deal with the issue of payment for his services as company secretary. Defendants content that the two day delay in seeking payment for his services was as an afterthought. Plaintiff explained it and I accept his evidence as truthful. The claim of

the Plaintiff was novel hence two day delay in letter of demand cannot be considered as afterthought.

63. In *Vedatech Corporation v Crystal Decisions (UK) Ltd. & Anor* [2002] EWHC 818 (Ch) (21st May, 2002)

"I turn to consider the principles. Although they are not really in doubt any more that does not mean they are easy to apply. First then the general principle. It is summarised in Goff and Jones, "The Law of Restitution", 5th Edn. (1998) at p.15:

"A close study of the English decisions, and those of other common law jurisdictions, reveals a reasonably developed and systematic complex of rules. It shows that the principle of unjust enrichment is capable of elaboration and refinement. It presupposes three things. First, the defendant must have been enriched by the receipt of benefit. Secondly, that benefit must have been gained at the plaintiff's expense. Thirdly, it would be unjust to allow the defendant to retain that benefit."

To similar effect is what Lord Clyde said in *Banque Financière v Parc* [1999] 1 AC 221 at p.237:

"Without attempting any comprehensive analysis, it seems to me that the principle requires at least that the plaintiff should have sustained a loss through the provision of something of for the benefit of some other person with no intention of making a gift, that the defendant should have received some form of enrichment, and that the enrichment has come about because of that loss."

See also Lord Hoffmann at p.234.

So, one is **not looking for an implied contract, an implied promise to pay**. That is an older view of the principle - really a legal fiction. One is looking for the three italicised elements in the quotation from Goff and Jones, benefit, at the plaintiff's expense, and unjust.

All three elements are undoubtedly present in this case. Vedatech undertook work for the benefit of Holistic. Holistic got the benefit of that work and it would be unjust for it to have it for nothing. To be fair Holistic have always recognized that it would be unjust for them to have the benefit of Vedatech's work for nothing. The real question is what they should pay."(emphasis is mine)

64. Both Plaintiff and Defendant in the submissions relied on implied or express contract for providing services to first Defendant. This is the older view and legal fiction that was not a requirement for unjust enrichment.

65. Lord Hoffman in *Banque Financiere De La Cite v. Parc (Battersea) Ltd and Others* [1998] UKHL 7; [1999] AC 221; [1998] 1 All ER 737; [1998] 2 WLR 475 (26th February, 1998); summarized the claim for unjust enrichment for employment in following manner

‘But I think it should be recognised that one is here concerned with a restitutionary remedy and that the appropriate questions are therefore, first, whether the defendant would be enriched at the plaintiff’s expense; secondly, whether such enrichment would be unjust and thirdly, whether there are nevertheless reasons of policy for denying a remedy. An example of a case which failed on the third ground is *Orakpo v. Manson Investments Ltd.* [1978] A.C. 95, in which it was considered that restitution would be contrary to the terms and policy of the Moneylenders Acts.’ (underlining is mine)

66. In order to consider last requirement, whether it would be ‘unjust’ one needs to consider the policy consideration. In other words if there is a legal bar or contrary to public policy.
67. The present English courts do not need such legal fiction, but rather presence of three requirements, benefit to the party from the services or labour from Plaintiff, and this labour or services would have caused some loss to the Plaintiff hence it would be unjust not to pay for labour or services.
68. All three such elements are present in this action and they are discussed below in detail. Benefit to the first Defendant was the work Plaintiff did and devotion of his time he could have used for other work.
69. Plaintiff was the company secretary of the Defendant from 2012 till 2017 for five years. There was no dispute as to appointment of him, though there are dispute as to the facts of the manner in which he was appointed. The manner in which he was appointed is irrelevant, and to determine whether there was a benefit to the first Defendant.
70. Even a less qualified person can also create a same benefit in an employment through dedication and commitment. Plaintiff who was not qualified with higher education qualification beyond secondary school qualification had worked with much enthusiasm and dedication and above all honestly. So the benefit to the first Defendant as company secretary and other work was no less than any other person employed for a fee.
71. Plaintiff had worked for first Defendant for five years as company secretary and this had obviously benefitted first Defendant. There was no evidence that Plaintiff wanted

to gift his services to first Defendant and this cannot be so considering legal implications that exposed him even to criminal and civil liabilities.

72. At the moment this position is held by the auditors and or accountants of first Defendant who are being paid for their services. There is no evidence that such company secretarial services were offered free, even so Plaintiff's claim cannot affect due to the conduct of another person.
73. Plaintiff did not have any prior knowledge about company secretarial work, but he had obtained experienced on the job and there were no complaints about his performance.
74. On the job learning or experience is everyday phenomenon in any employment irrespective of its level and depending on the person's ability and commitment that person may gain more experience than the remuneration, then to reject. This is the reason for increments in salary on regular basis.
75. The amount of experience and or training is not a reason to reject remuneration. Gaining experience and training obviously have a positive outcome for the organization and this is a reason to enhance remuneration.
76. When Plaintiff was appointed as company secretary to the Defendant board of directors have approved said appointment irrespective of his past experience as a company secretary.
77. He had a also one of the signatories to the company and had done the task assigned diligently and honestly. As a company secretary Plaintiff had worked with commitment in the best interest of company.

Amount of Damages in unjust enrichment for employment

78. The yardstick for assessment of damages can vary depending on the circumstances. The fact that parties had not only entered in to a contract and or negotiated makes it even more challenging, but that is not a reason to reject damages and confine to nominal damages and or for declaration only. That would serve no purpose. Unjust enrichment is an equitable remedy and court needs to assess damages on the basis of 'restitution' basis. Or compensation adequate to restore for loss- loss of time and labour of the Plaintiff.
79. In a very early case relating employment , House of Lords (UK) in Way v Latilla [1937] 3 All ER 759 held that court needs to assess it on available evidence and cannot impose rates on a document that was not agreed by parties. But such

evidence is relevant in order to assess the market rates. The basis of assessment applied by House of Lords in *Way* (supra) was ‘reasonable participation.’¹

80. House of Lords in *Way*(supra) dealing with issue of arriving at a reasonable value for compensation as damages for employment held(Per Lord Wright)

“.....The realisation of that value was removed from the actual services by the lapse of time (during which large sums of money were expended and adventured), and by many contingencies, and therefore the proper proportion may be comparatively very small, though the fruits of success were very large. **The precise figure can be only a rough estimate. If what the court fixes is either too small or too large, the fault must be ascribed to the parties in leaving this important matter in so nebulous a state.**” (emphasis added)

81. Unfortunately parties did not address this issue at hearing. Plaintiff in the pleading stated that if a paid personnel were engaged to work he did it would have cost more than \$50,000. (see paragraph 30 of the statement of claim) This fact relating to assessment of work and payment suggested, was not answered in the statement of defence.
82. So I can only make an estimate, considering the work done by Plaintiff for over five year time period.
83. In the evidence second Defendant said there was no need to have a property manager, but it is axiomatic that any building of any nature needs constant maintenance and if not they will deteriorate.
84. According to Plaintiff he had provided his services for following
- a. Company Secretary.
 - b. Collection of all rents.
 - c. Receipting and banking the rentals.
 - d. Attendance to maintenance and repairs of all the properties.
 - e. Liaison with accounting and all statutory returns filing.
 - f. Issuance of all letters to all tenants
 - g. Arranging insurance and surveys
 - h. Dealing with legal issues with lawyers eg. Removal of caveats on the property
85. Second Defendant does not deny that Plaintiff worked for first Defendant. He said that most of the tenants are commercial tenants but their rentals needs to be collected and receipts needs to be issued with any issuance of receipts for VAT if applicable. These were functions that the Directors did not have time to attend. It is clear from the

¹ See *Vedatech Corporation v Crystal Decisions (UK) Ltd. & Anor* [2002] EWHC 818 (Ch) (21st May, 2002)

profile of the second defendant he does not have time to attend to such trivial issues and most of the time he had more important things to attend. There is no evidence that any of the things above were done by directors on regular basis, as the Plaintiff did. His work and honesty in that needs recognition and adequately remunerated.

86. In the circumstances in my mind an award of global sum of \$45,000 is justified for all the work that Plaintiff did for first Defendant.

Interest

87. Where a party had delayed litigation court can refuse grant of interest (see Kuwait Airways Coporation v Kuwait Insurance Company SAK [2000] Lloyd's Rep IR 678). Plaintiff had waited for five years without seeking legal redress for his payments. This action was filed as he resigned from his position.
88. Plaintiff had also sought interest. In The Popi M [1984] 2 Lloyd's Rep 555, at 561 it was held,

"There is no question but that the award of interest is a matter of discretion. However, the fundamental basis for exercising that discretion is to compensate a party for being kept out of the money which the Court has adjudged he should have been paid: the award or refusal to award interest should not be used as a means of penalizing a party, for instance for the way in which negotiations or litigation have been conducted on his behalf."

89. In the exercise of my discretion I would not award any pre judgment interest for the Plaintiff as I have reached the sum of \$45,000 as a global sum considering the time value of money for the services. Time value of the award sum is the basis of interest.
90. Past judgment interest is statutorily determined at 4% in terms of Section 4 (1) of Law Reform (Miscellaneous Provisions) (Death and Interest) Act 1935.

CONCLUSION

Plaintiff was appointed as first Defendant's company secretary by the board of directors in 2012 and had functioned in the said position till 2017 for five years. Plaintiff had worked for nearly two hours per day and he was the only person who worked daily on operational level of the first Defendant. There was a need to such operations considering the circumstances such as removal of caveats, collection of rentals and obtaining commercial rate rentals maintenance/repairs etc along with statutory duties of company secretary. Since there were no specific terms Plaintiff did many operational functions of the first Defendant. Parties did not enter in to formal terms of employment and Plaintiff's work was approved by directors and shareholders except in one instance where increase of rental was not allowed. The reason for that was obvious. Company secretary attaches certain civil as criminal liabilities. Plaintiff's position was not a rubber stamp and required independent judgment and

also reasonable care and diligence in dealings. Plaintiff had functioned successfully and first Defendant had benefitted from his services. Plaintiff could easily spend the time he devoted for another work as he was already an employed person. It would be unreasonable not to pay him for his work. Considering the time and also responsibilities attached to it, in my judgment a global sum of \$45,000 is justified. The cost of this action is summarily assessed at \$3,000.

FINAL ORDERS

- a. Plaintiff is granted a sum of \$45,000 against first Defendant, as full and final compensation for work he did for first Defendant as company secretary.
- b. Claims against second and third Defendants are struck off
- c. Cost of this action is summarily assessed at \$3,000 to be paid by first Defendant to the Plaintiff, within 21 days.

Dated at Suva this 3rd day of July, 2020.



.....
Justice Deepthi Amaratunga
High Court, Suva