

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

CIVIL ACTION NO.: HBC 65 of 2020

**BETWEEN : AMRAIYA NAIDU
PLAINTIFF**

**AND : RAJEN SWAMY
DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFFS : Munro Leys
DEFENDANT : Not Represented
RULING BY : Acting Master Ms Vandhana Lal
DELIVERED ON : 22 April 2022

INTERLOCUTORY RULING

Application and background of file

1. The Plaintiff via his solicitors on or about 17th February 2020 caused a writ of summon to be filed against the Defendant.
2. The writ of summon endorsed with statement of claim was served on the Defendant on 17th February 2020, following which an acknowledgement of service was filed by the Defendant's then solicitors on 02nd March 2020.
3. A statement of defence was filed on 17th March 2020 followed by the Plaintiff's reply to defence on 30th March 2020.
4. The Plaintiff thereafter has moved the Court under Order 14 of the High Court Rules to enter final judgment against the Defendant as follows:

1. *Judgment in sum of \$FJD200,000 against the defendant;*
2. *Interest on the judgment sum pursuant to the Law Reform. (Miscellaneous Provisions) (Death and Interest) Act;*
3. *Costs.*

This application is supported by an affidavit sworn by the Plaintiff on 19th November 2020.

5. The Defendant's solicitors as yet 14th April 2021 were granted leave to withdraw as solicitors on record.
6. The Defendant despite being served with the application for withdrawal of counsel by his solicitors failed to appear in court.
7. Hence the Court proceeded to hear the Plaintiff's application of 23rd November 2020 on an undefended basis.

Plaintiff's Contention

8. The Plaintiff has known the Defendant for more than 20 years.
9. He had an oral agreement with the Defendant, for him (the Plaintiff) to lend the Defendant F\$200,000 on interest free basis for purpose of business investment. The sum borrowed was for purchase of the Flagstaff Laundry.
10. The Defendant was to repay the debt within a year.
11. The Plaintiff states he withdrew the said sum from his investment fund at Unit Trust of Fiji and deposited this into his bank account number 1473307 on 30th January 2013.

12. On 31st January 2013, the Plaintiff transferred this amount to the account of the Defendant. To his affidavit he has annexed a copy of the statement showing deposit of \$200,000 into his account and the transfer of funds to the Defendant's account.
13. The Defendant has failed to repay the debt, hence the Plaintiff began follow up with the Defendant via calls and text messages.
14. On 10th April 2019 the Plaintiff and the Defendant formalized the oral agreement by entering into a written "Lending Agreement". A copy of the said agreement is annexed to the Plaintiff's affidavit marked as "AN-2".
15. On 29th October 2019 his previous lawyers demanded payment of the debt, however the Defendant failed to respond.
16. In his defence, the Defendant stated the parties entered into the 10th April 2019 agreement where the Plaintiff has not lent the money.
17. According to the Plaintiff, there was no reason for him to lend further \$200,000 to the Defendant when the existing debt remained unpaid.

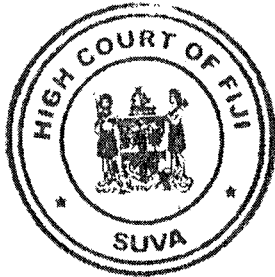
Determination


18. There is sufficient evidence that on 30th January 2013 the Plaintiff received into his bank account with ANZ a sum of \$200,000 and later on 31st January 2013 he transferred the said sum to Rajen Swamy.
19. The "Lending Agreement" which the Plaintiff claims is an acknowledgment of the debt given to the Defendant in 2013 is dated 10th April 2019.
20. The said agreement reads that lender has agreed to loan sum of \$200,000 and that the money is given on the condition that the borrower repays the same interest free on or before 31st January 2019.

21. There is no mention that this agreement is an acknowledgment of debt for the \$200,000 given on or about 31st January 2013.
22. I do not find it's a proper case to be determined on an Order 14 application.
23. The issue if the 2013 debt is being acknowledged and whether the claim is/not barred by Section 4 of the Limitation Act should be tried out via *viva voce evidence*.

Orders

24. Accordingly, I dismiss the Plaintiff's application of 23rd November 2020.
25. No orders are made for costs.




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Vandhana Lal [Ms]
Acting Master
At Suva.

22 April 2022

TO:

1. Suva High Court Civil Action No. HBC 65 of 2020;
2. Munro Leys, Solicitors for the Plaintiff;
3. Rajen Swamy the named Defendant appearing in person.