

**IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION**

CIVIL ACTION NO. HBC 285 OF 2021

BETWEEN : **LEE WAH YIP PROPRIETARY LIMITED** a limited liability company
having its registered office at Lautoka. **PLAINTIFF**

A N D : **JAMES JNR LEDGER** of Lautoka, Businessman trading as **LEDGERS
PAWNSHOP** **DEFENDANT**

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCES : Mr. S.Nandan & Mr. Rauben for the Plaintiff.
Defendant absent & No appearance.

DATE OF HEARING : 30th June, 2022

DATE OF DECISION : 4th August, 2022

J U D G M E N T

1. This is an action commenced by the Plaintiff Company by filing its writ of summons, together with the Statement of claim, on 02nd December 2021 , against the Defendant seeking reliefs, inter-alia;
 - i. An Order that the Defendant do pay the Plaintiff a sum of \$22,807.29 being arrears of monthly rental as per clause 6 of the Tenancy Agreement ;
 - ii. An Order that the Defendant do pay the Plaintiff the sum of \$11,944.04, being arrears of Water bill, as per clause 7 of the Tenancy Agreement;
 - iii. An Order that the Defendant pay monthly rental in a sum of \$4,140.00 until such time the Defendant vacates the property;
 - iv. Interest at the rate of 10 per cent per annum as per clause 5 of the Tenancy Agreement);
 - v. General damages.

2. The writ of summons was, reportedly, served on the Defendant personally on the 14th of January 2022 and the Defendant filed the acknowledgment of service on 28th of January 2022 intimating his intention to defend the action.
3. As no statement of defence was filed by or on behalf of the Defendant within the stipulated time period, the Plaintiff's Solicitors on 28th March 2022 filed the inter-parte Summons moving for reliefs, inter-alia, for formal proof of the action, and for Orders prayed for in the Statement of claim and the assessment of damages.
4. Though, the said Inter-parte Summons was also, reportedly, served on the Defendant on 07th April 2022, returnable on 19th of April 2022, since the Defendant was not present in Court on that date, the matter was directed to be mentioned on 26th April 2022, on which day as well the Defendant was absent and unrepresented. Accordingly, the matter was fixed for formal proof hearing on 30th June 2022.
5. At the hearing held before me on 30th June 2022, the Property Manager of the plaintiff Company, namely, Abdul Aslam, gave evidence by marking exhibits from "PE 1" to "PE7" and closed the case for the Plaintiff.
6. I have carefully considered the oral evidence of the Plaintiff's one and only witness PW-1, and the contents of the exhibits marked from "PE-1" to "Pe-7" together with the contents of the pleadings filed of record.
7. I find that the witness has been duly authorized by the plaintiff Company by "Pe-1" to represent and give evidence on behalf of the Plaintiff Company.
8. According to the Plaintiff's witness, the Plaintiff Company that became the Registered Lessee of the Land and premises as per the Lease Agreement marked as "Pe-2", has given certain parts of the buildings situated therein un to the Defendant for monthly rental by virtue of Tenancy Agreement entered into on 14th January 2015 marked as "Pe-3" for a period of 6 years. This Tenancy period has commenced from 1st January 2015 and was to end on 31st December 2019, according to the terms of the said Tenancy Agreement and as per the evidence of the PW-1.
9. The rental agreed per annum was \$4,140.00, which was to be paid in monthly installment of \$345.00. The PW-1 through his evidence has demonstrated that as per the Exhibit marked as "Pe-4", which is the Demand Notice dated 20th August 2020, the Defendant had fallen arrears of rental in a sum of \$29, 985.00 which, after deduction of some payment made after sending the Demand Notice, is now \$22,807.29 as shown in prayer I in the Statement of claim.
10. The said amount according to the witness still remains unpaid and despite of such arrears of rental, the Defendant is said to be holding to the premises in suit and continuing in his business activities therein without making any payments for the continuing period as well.

11. Apart from the above, it has also been brought out by the evidence of the PW-1 that the Defendant has left an arrears of bill for the Water supply to the premises in suit, which is in a sum of \$ 11,944.04 as per the pleadings and paragraph ii of the prayer to the Statement of claim. This has been substantiated by the oral evidence and the Exhibits marked as "Pe-5" and "Pe-6".
12. The exhibit marked as "Pe-7" gives the details of the rental and though it showed the arrears due as \$29,285.12, the Plaintiff has limited its claim to \$22,807.29 as prayed for in paragraph I of the prayer to the Statement of claim.
13. The defendant, despite the service of Summons and filing of the acknowledgment of service, has not opted to file his statement of defence and thereby left the claim of the Plaintiff unchallenged.
14. I am satisfied that the Plaintiff has proved its case against the Defendant by its uncontradicted and unchallenged oral and documentary evidence unfolded before this Court. Accordingly, this Court decides that the plaintiff is entitled to recover \$22,807.29 being the arrears of rental as prayed for in paragraph I of the prayer to the Statement of claim.
15. I am also satisfied on the available evidence that the Plaintiff is also entitled to recover \$11,944.04, being the arrears of water bill that had fallen due as per the water bill issued for the period from October 2016 to January 2017, which is marked as "Pe-6".
16. The Plaintiff claim general damages for breach the Agreement as well. Damages are available as of right on proof of breach of contract. Contractual damages are compensatory and not punitive, i.e., they aim to compensate the claimant for losses suffered, as opposed to seeking to punish the defendant.
17. The basic rule of recovery of compensation in the case of breach of contract is that the non-breaching party is to be put into the position it would have been in had the contract been performed as agreed (*Robinson v Harman (1848) 1 Ex 850; and see Surrey County Council v Bredero Homes Ltd [1993] 1 WLR 961*). This principle was also confirmed as fundamental in *Golden Strait Corporation v Nippon Yusen Kubushika Kaisha, The Golden Victory [2007] 2 WLR 691*.
18. At the trial, the plaintiff has discharged its onus of proof through the oral and documentary evidence unfolded before me. The defendant being the defaulter of monthly rental and the utility bill (water bill), by failing to pay those dues as per the Tenancy Agreement marked as "Pe-3" as and when those payment fell due, has breached the Agreement. Accordingly, the Plaintiff is entitled to claim and the defendant is obliged to pay the dues and damages to the plaintiff.

19. On the evidence adduced by the Plaintiff, this Court can safely arrive at a conclusion that the Defendant has breached relevant clauses of the Tenancy Agreement that he had entered into with Plaintiff for the timely payment of monthly rental and charges for the water consumption. Apart from his liability to pay the monthly rental and the Water bill as agreed, the Defendant is also found liable to pay damages on account of his breach of Tenancy Agreement.
20. The court will not make any order for the rental that may have fallen arrears after August 2020 as no sufficient evidence is placed before the Court.
21. The Plaintiff has also satisfied the Court through its witness that it had to incur substantial amount as the legal fees and costs as well.

OUTCOME:

- a. A judgment entered in favor of the plaintiff for a sum of \$22,807.29 being the arrears of rental till the month of August 2020.as per the paragraph I of the prayer to the Statement of claim.
- b. The Plaintiff is also entitled to recover a sum of \$11,944.04 being the arrears of Water bill till the month of January 2017 as prayed for in paragraph ii of the statement of claim.
- c. The Plaintiff is also entitled for a sum of \$6,000.00 being the general damages.
- d. There shall be 10% interest payable per annum on the aforesaid amounts payable from the date of filing the action till the said amount are fully paid and settled.
- e. The Plaintiff is entitled to a summarily assessed cost of \$1,000.00 payable by the Defendant.




A.M. Mohammed Mackie
Judge

At High Court Lautoka this 4th day of August, 2022.

SOLICITORS:

For the Plaintiff: Messrs- S .Nand Lawyers
For the Defendant: In Person