

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 24 of 2020

Harishwar Chand

Plaintiff

v

X-Zone Transport Ltd

Defendant

Counsel: Mr S. Nand for the plaintiff

Mr V. Kumar for the defendant

Date of hearing: 27th September, 2022

Date of Judgment: 5th April, 2023

Judgment

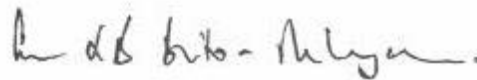
1. The plaintiff, on 10th October 2013, had let out part of his property, (native lease) at Khalsa Road, Nasinu to the defendant at a monthly rental of \$1,000.00 (VIP) for 3 years. The plaintiff issued a Notice to the defendant to vacate the property on 10th October, 2016. The defendant vacated the property in mid-January, 2017, but failed to remove various items such as trucks, tyres and engine parts. The plaintiff requested the defendant to remove his items and demanded a sum of \$2000.00 per month for occupying the property after expiry of the tenancy. The plaintiff seeks judgment in a sum of \$ 45000.00.

2. The statement of defence states that the plaintiff gave the defendant two months further time after the expiry of the lease and accepted \$2,000.00 as rent for that period. The plaintiff locked the gate and did not allow the defendant to take out his belongings to-date. The defendant did not agree to pay storage charges. All its items are in a worse condition than initially including the truck. The defendant has suffered loss and counterclaims a sum of \$338,500.
3. The reply to defence and defence to counterclaim states that the defendant was informed that the plaintiff intends to develop the property and he would suffer loss if the plaintiff does not vacate.
4. I declined the application made by Mr Kumar, counsel for the plaintiff for adjournment of the trial, as no valid reason was given. This case was fixed for trial on 29th March,2022.
5. Mr Nand, counsel for the plaintiff stated that he is restricting his claim to storage charges in a sum of \$36,000.00.

The determination

6. It is agreed that the plaintiff gave the defendant two months time after the lease expired to occupy the property till 10th December,2016, as requested by the defendant and accepted rent for that period. It is also agreed that the defendant's truck was removed in July 2018.
7. The issue for determination is whether the plaintiff is entitled to claim storage charges for the truck and other items which continued to be kept in the property.
8. PW1, (*the plaintiff*) in evidence in chief said that the defendant moved out in mid-January,2017, but failed to remove his items till July,2018.
9. PW2, (*Druv Patel*) said that he had been a tenant of the plaintiff at Khalsa Road since 2012. When the defendant moved out, he approached the plaintiff to rent that space at \$2,000.00 a month. In cross-examination, he said that the plaintiff told him that the building would be vacated in October,2016.

10. In my view, given that the plaintiff had a tenant in waiting who was agreeable to pay rent of \$ 2000.00 a month, the plaintiff has suffered loss as a result of the defendant failing to remove his items.
11. In my judgment, the defendant is liable to pay the plaintiff storage charges for the period mid January, 2017, to July,2018 at \$ 2000.00 per month totalling a sum of \$36,000.00.
12. No evidence was led for the defence. The counterclaim is accordingly declined.
13. **Orders**
 - a. The defendant shall pay the plaintiff the sum of \$36,000.00 together with interest at 1.5% per annum from 31st July,2018, till payment in full.
 - b. The defendant shall pay the plaintiff costs summarily assessed in a sum of \$ 1500.00.



A.L.B. Brito-Mutunayagam

JUDGE

5th April , 2023

