

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

**CIVIL ACTION NO. HBC 23 OF 2019**

**BETWEEN** **REDDY'S ENTERPRISES LIMITED** a limited liability company  
having its registered office at 35 Ravouvou Street, Lautoka, Fiji  
Islands trading as **TANOVA SKYLODGE HOTEL**  
**PLAINTIFF**

**A N D** **ALVIN CHAND** of Labasa, Labasa Town Council - Debt Collector  
**DEFENDANT**

**BEFORE** Hon. Justice A.M. Mohammed Mackie

**APPEARANCES** Mr. Selvin Singh- For the Plaintiff.  
Mr. R. Chouhan – For the Defendant.

**DATE OF TRIAL** 25<sup>th</sup> September 2023.

**WRITTEN SUBMISSIONS:** On 19<sup>th</sup> October 2023 by the Plaintiff.  
No written submissions filed by the Defendant.

**JUDGMENT** 28<sup>th</sup> November 2023

**JUDGMENT**

**A. Introduction**

1. The Plaintiff Company brought this action against the Defendant by way of its Writ of Summons and the Statement of Claim dated and filed on 5<sup>th</sup> February 2019 seeking, *inter alia*, the following reliefs;
  - i. *Judgment for \$32,000.00.*
  - ii. *Interest at the rate of 13.5% per annum on judgment. Alternatively, the Plaintiff claims interest on such amount and at such rate as this Court directs,*
  - iii. *Costs.*
2. The Defendant on 1<sup>st</sup> April 2019 filed his Statement of Defence dated 26<sup>th</sup> March 2029, together with a counter claim in a sum of \$7,000.00 and moved for the following reliefs;
  - a. *That the Plaintiff's claim be dismissed;*
  - b. *Judgment for the Defendant on his Counter claim;*
  - c. *Costs*
3. The plaintiff on 15<sup>th</sup> April 2019 filed its Reply to Defence and Defence to counter claim moving to dismiss the Defendant's Statement of Defence and Counter claim.

4. Subsequently, parties on 2<sup>nd</sup> February 2021 filed the PTC minutes dated 26<sup>th</sup> January 2021 comprised of 7 agreed facts and 10 agreed issues, which are reproduced bellow for the sake of clarity and easy comprehension of the actual dispute between the parties.

**Agreed Facts:**

1. *The plaintiff is a limited liability company having its registered office at 35 Ravouvou Street, Lautoka, Fiji Islands and the Owner and Operator of Tanoa Skylodge Hotel.*
2. *The Defendant at all times was an employee of the Plaintiff at Tanoa Skylodge.*
3. *The plaintiff's main revenue stream at Skylodge is monthly rental where tenants are to pay at the beginning of every month.*
4. *At all material times, the Defendant was responsible for collecting rent from the tenants at the beginning of every month.*
5. *On or about 18<sup>th</sup> April 2017, the defendant resigned from the Company.*
6. *On 27<sup>th</sup> June 2017, the plaintiff sent a notice to the Defendant requiring to pay the sum of \$39,478.76 on account of collected rent from the plaintiff's tenants.*
7. *The defendant has paid the plaintiff a sum of \$7,000.00.*

**Agreed Issues:**

1. *Whether the defendant from May 2016 to April 2017 caused a loss of \$39, 000.00 to the Plaintiff by collecting rents from the Plaintiff's tenants and applying the rent monies for his personal use?*
2. *If so, whether the Defendant is liable to reimburse the Plaintiff the remaining sum of \$32,000.00?*
3. *Whether the Plaintiff is entitled to the judgment for \$32,000.00 against the Defendant?*
4. *Whether the Plaintiff is entitled to interest at the rate of 13.5% per annum on the judgment?*
5. *Whether the Plaintiff is entitled to interest on such amount and at such rate as this honourable Court directs?*
6. *Whether the Defendant agreed to pay the sum of \$7,000.00 under duress and in expectation of getting a reference from the plaintiff?*
7. *Whether the \$7,000.00 was obtained from the defendant by way of an extortion by the plaintiff by threatening to report the matter to the police, if the defendant failed to pay the same?*
8. *Whether the Plaintiff promised to provide a reference to the defendant after he reimburses the loss incurred.*
9. *Whether the Defendant is entitled to a reimbursement of \$ 7,000.00 by the Plaintiff?*
10. *Who is entitled to costs and on what basis?*

**B. TRIAL:**

5. At the one day trial held on 25<sup>th</sup> September 2023, one **Shaneel Padarath**, the Financial Controller cum Secretary of the Plaintiff Company, gave evidence for and on behalf of the Plaintiff by marking documents from "P Ex-1" to "P Ex-6B", while the Defendant gave evidence for and on his behalf by marking documents "D Ex-1" to "D Ex-6".
6. At the trial, both parties relied on the documents in their respective bundle of documents which had, admittedly, been discovered. After the trial, counsel for the

Plaintiff tendered his written submissions on 19<sup>th</sup> October 2023, for which I am thankful. The Defendant did not file his written submissions.

**C. Background**

7. The background facts as averred in the Statement of Claim (SOC) are as follows.
  - a. That at all times material to this action, the Defendant being an employee of the Plaintiff at its TANOVA SKYLODGE HOTEL (Skylodge), was responsible for the collection of monthly rentals from its tenants at the beginning of every months.
  - b. The plaintiff alleges that the Defendant between May 2016 and April 2017 caused a loss of \$39,000.00 to the Plaintiff by utilizing the said sum collected as rentals for his personal use, and failed to give account to the said sum. Thus, the Plaintiff states that the Defendant has unlawfully appropriated the said sum of \$39,000.00 and has become liable in restitution to reimburse the Plaintiff the balance sum of \$37,000.00 after deducting \$7,000.00 paid on 26<sup>th</sup> June 2017.
  - c. That after the resignation of the Defendant on or about 18<sup>th</sup> April 2017, the Plaintiff came to know the Defendant's fraudulent activities and the Defendant returned \$7,000.00 on 27<sup>th</sup> June 2017 leaving the balancer sum of \$32,000.00 unpaid though demand thereto was made.
8. The Defendant's stance as per his Statement of Defence (SOD) is as follows.
  - a. In paragraphs 1 to 4 of his Statement of Defence, the Defendant admitted the averments in paragraphs 1 to 4 of the statement of claim, particularly, that he was an employee of the plaintiff at all material times and was responsible for collecting rent from the tenants of the Plaintiff at SKYLODGE at the beginning of every month.
  - b. By denying the contents of paragraph 5 of the SOC, he states that he worked for the Plaintiff at SKYLODGE from April 2013 to January 2017 till he was transferred to Tanoa International and worked there until March 2017 when he resigned.
  - c. He alleges that no issues were raised while he was in the Plaintiff's employment and only after his resignation, the issue was brought up by the Plaintiff. In paragraph 6 of his SOD, while denying the allegation of unlawful appropriation of \$39,000.00, in paragraph 7 thereof admitted his resignation.
  - d. In paragraph 8 of the SOD, he has stated that he resigned to look after his sick Father in Labasa. That he had secured a job in Labasa Town Council, which wanted a reference from his previous employer, the Plaintiff, and as he did not want to miss the employment opportunity with it and as he was desperate for a reference, he agreed to pay the Plaintiff the sum of \$7,000.00 in expectation of reference, but the Plaintiff failed to give him a reference.
  - e. By admitting the paragraphs 9 and 10 of the SOC, which were on the payment of \$7,000.00 and non-payment of the balance \$32,000.00 , he states that he did not

make any such payment as debt since he did not owe any money to the Plaintiff and claims back the \$7,000.00 already paid to the Plaintiff by way of counter claim.

**D. Issues to be determined:**

9. Though, parties had recorded 10 agreed issues as per the PTC minutes, I find that answering the following 3 pivotal issues would conveniently dispose this matter.
- a. *Did the Defendant steal/ misappropriate the sum of \$32,000.00 from the Plaintiff?*
  - b. *If so, is he required to return those monies to the Plaintiff together with interest and costs?*
  - c. *If not, is the Defendant entitled to a return of the \$7,000.00 that he paid to the Plaintiff on 27<sup>th</sup> June 2017?*

**E. The Evidence & Analysis:**

10. At the outset, it is observed that when referring to the actual amount, allegedly, appropriated by the Defendant and the amount due on it now, apparently, for the sake of convenience, only the closest round figures in a sum of \$39,000.00, instead of the actual sum of \$39,478.76, has been mentioned in the most part of the pleadings, PTC Minutes and in the evidence. However, for the avoidance of confusion, I decided to rely on the amount (ie. \$39,478.76) stated in the agreed fact No-6 in the PTC minutes, which is in harmony with the amount transpired through the relevant annexures.
11. The plaintiff's witness, Shaneel Padarath, ( PW-1), being the chief financial controller cum Secretary of the Plaintiff Company, has given comprehensive evidence substantiating the averments in the Plaintiff's Statement of claim and the contents of the documents marked at the trial.
12. PW-1 stated that he has been working for the Plaintiff Company for 13 years, and the Defendant served as an Account Officer at the TANO A SKYLODGE from 2014 till 2017, which is owned by the Plaintiff "Reddy Enterprises Limited". He added that the Defendant, Alwin Chand, was looking after the rented properties at TANO A SKYLODGE and collecting the rental monies from the tenants thereof from the year 2014 till 2017.
13. The witness referred to the letter dated 27<sup>th</sup> June 2017 marked as "P Ex-1", by which the final amount then alleged to be due from the Defendant in a sum of \$ 39,478.76, was notified to him, being the misappropriated amount as per the final reconciliation of accounts. He testified further that the Defendant being called upon to settle it in full a sum of \$7,000.00 was paid by him through depositing in to the Plaintiff's Bank account. The receipt of this letter was an admitted fact and this part of evidence remained unchallenged.
14. The witness also spoke on the bank statement marked as "P Ex-2", which corroborated the Plaintiff's position that the Defendant on the very same date ie. 27<sup>th</sup> June 2017 had deposited \$7,000.00, being the part payment of the said total misappropriated sum of \$39,478.76. Though, the counsel for the Defendant objected to this document, on a copy of it being served instantly, counsel withdrew his objection. However, the payment of \$7,000.00 is also an admitted fact, while only the purpose of the payment is in issue.

15. The document marked as "P Ex-3" dated 17<sup>th</sup> May 2017 is a crucial document, whereby the Defendant had accepted that errors occurred during his years of service at the plaintiff Company and took full responsibility to settle the debts of which the amount then was \$20,011.12. PW-1 has given clear evidence that the said sum misappropriated became \$39,478.76 on further auditing being carried out. The final sum was duly notified to the Defendant as per "P Ex-1" on which he made the part payment of \$7,000.00 as he had already agreed with the Plaintiff through telephone conversations and the aforesaid document marked as "P Ex 3".
16. The prepayment summary, which showed the total amount misappropriated as \$39,478.76, was tendered and marked in evidence as "P Ex-4", and the rental receipts were marked as "P Ex-5" without any sort of objection being raised by the Defence Counsel. The final reconciliation excel sheets showing the amount \$39,478.76 were marked as "P Ex-6 A" and "P Ex-6B" and contents thereof were not seriously disputed.
17. I observe that the PW-1 has given convincing evidence as to the culpability of the Defendant, and I have found his answers under the examination in chief, cross examination and re-examination were clear and prompt. He has given un-contradicted evidence as to how the Defendant manipulated the accounts on the rentals received by him, particularly by using the prepayments made by other tenants to bridge the shortages.
18. It is obvious that as long as he was in charge of the subject of collecting rentals at the SKYLODGE, he had managed to continue with this activity and only when he was transferred to the TANOVA INTERNATIONAL in January 2017 and the subject was handled by another person, the nefarious activities of the Defendant had come to light. As per the evidence, the misappropriated amount according to the initial investigation was only \$ 20,011.12 and subsequently it was revealed to be in a sum of \$39,478.76. Though, he was subjected to lengthy cross examination by the Defence Counsel, his evidence has remained unassailed on this aspect.
19. The Defendant in his evidence in chief (in page 33 of the transcript) has admitted that he made some mistakes in collecting rents. His explanation that he did not have that much of time to collect rentals from debtors cannot be accepted as a justifiable reason for his failure to provide the actual account for the rental monies he had already collected.
20. The notable tacit admission of the debt by the Defendant was the payment of \$7,000.00 out of the total sum of \$39,478.76, and his explanation that the said sum was paid to obtain a reference from the Plaintiff Company is only an afterthought generated by the defence to avoid the liability. In his further evidence as per page 34 of the transcript, he has admitted that the claim is against him, the amount so claimed was \$39,478.76 and it was out of the said sum only he paid \$7,000.00.
21. If he was to obtain a reference from the Plaintiff only on payment of \$7,000.00, there should have been some form of written communication on it before parting with the money, and I observe that he had not made such a request from the Plaintiff by responding to the letters or emails sent by the Plaintiff. If there was in fact such a

requirement, he would, undoubtedly, have indicated it in his letter of resignation dated 24<sup>th</sup> April 2019 marked as "D Ex-6. No tangible evidence has been adduced by the Defendant in order to substantiate his purported claim that he paid \$7,000.00 for a reference from the Plaintiff.

22. It is to be observed that in his examination in chief ( page 39 of the transcript) he says that Labasa Town Council had taken him as an Internal Auditor on provisional basis, while the reference from the Plaintiff was yet to be received . His evidence in examination in chief was that as he had not submitted a reference from the Plaintiff, he was demoted as a Market attendant. But, under his cross examination in page 50, he has admitted that he lost the position of internal Auditor at the Labasa Town Council as the same position was dissolved by the Minister in charge. Thus, the claim of the Defendant that he lost the job as an internal Auditor due to non – availability of the reference from the Plaintiff is false.
23. It is in fact difficult for this Court to believe that an employer would require an employee to pay for the issuance of a reference when he/she leaves the job, unless the latter was indebted to the former in some manner. The Defendant had left the Plaintiff's Company with effective from 18<sup>th</sup> April 2017 as per the letter dated 24<sup>th</sup> April 2017 marked as "D Ex-4". His evidence was that he was leaving the job to look after his father in Labasa, and no evidence whatsoever was adduced to show that he had in fact requested for a reference from the Plaintiff at that stage.
24. The payment of \$7,000.00 has taken place only on 27<sup>th</sup> June 2017 through a Bank transfer pursuant to the Defendant's admission of the initial sum of debt as per the letter dated 17<sup>th</sup> May 2017 marked as "P Ex-3" and the subsequent demands made by the Plaintiff through phone calls, emails and particularly by the letter dated 27<sup>th</sup> June 2017 marked as "P Ex-1".
25. It is clear from evidence that it was only after the Defendant's transfer from SKYLODGE to the TANOVA INTERNATIONAL, the investigations had commenced into these irregularities, which culminated in finding the total sum misappropriated to be in the range of \$39,478.76, which being demanded by the Plaintiff, a sum of \$7,000.00 was paid by the Defendant. I don't see any undue compulsion or extortion being exerted by the Plaintiff as alleged by the Defendant.
26. The Defendant did not opt to write back and state that he does not owe or that he disputed the amount demanded by the Plaintiff. (Vide the answers given under cross examination in page 47 of the transcript). In the same page when he was confronted with a question that he resigned from the job to avoid being caught and prosecuted, his answer thereto was totally evasive. He admitted in page 49 that he did not write back to dispute the debt.
27. When a specific question was put to him as per page 50 of the transcript to the effect **"Now the plaintiff's position is that you stole and they can't give you a reference and they have never promised you a reference in writing at all correct?",** his prompt answer was **"Yes Sir"**. He also admitted in the same page that the Plaintiff cannot be blamed for anything, particularly, for him being a Bus Driver in New Zealand now. He

admitted further that if the reference was so important or critical, Labasa Town Council would not have employed him for 4 years.

28. Though, he had taken up a position that on 17<sup>th</sup> May 2017 he was in Vanua Levu , he admitted the signing of the “P Ex -3” being witnessed by two officers, namely **Printit** and **Raj** of the Plaintiff company. (Vide page 51).
29. The said “P Ex-3” letter signed by the Defendant, with two witnesses, was with the Defendant from the year 2017. If he had not signed it or his signature had been forged as he alleges now, he could have acted upon it in numerous ways in order safeguard him and to clear his name from this allegation and claim. His allegation that the payment of \$7,000.00 was obtained by the Plaintiff by way of extortion is unsubstantiated.

**F. Conclusion:**

30. Careful analysis of the total evidence led, clearly demonstrates that the Plaintiff has proved on preponderance of evidence that the Defendant, while serving as a rent collector of the Plaintiff’s business called TANOVA SKYLODGE, had misappropriated a sum of \$39,478.76. The evidence also establishes that the Defendant, having admitted his wrongdoing and made a part payment of \$7,000.00 out of it, is now in an unsuccessful attempt to escape from liability. I don’t find any justifiable reason to deprive the Plaintiff of its claim against the Defendant.
31. The Plaintiff has proved the unjust enrichment of the Defendant through his receipt of the rental collections, it was at the expense of the Plaintiff and he is unjustly retaining it. ***National Bank of New Zealand Ltd v Waitaki International processing (NI) Ltd [1997] 1NZLR***. The pivotal issues in paragraph 9(a) & (b) above should be answered in favour of the plaintiff. The issue 9(c) does not warrant an answer in view of answer to issues (a) and (b).
32. Accordingly, the total sum misappropriated by the Defendant was \$396,478.76 and after deducting the \$7,000.00 paid by him, the balance sum of \$32,478.76 has to be recovered from the Defendant.
33. This Court finds that the Defendant by misappropriating the said sum of \$39,478.76 as alleged by the Plaintiff, has unjustly enriched him and he is liable to pay back the Plaintiff the remaining sum of \$32, 4878.76, together with interest at the rate of 3% from the date of filing the action till the date of judgment and further interest at the rate of 4% from the date of the Judgment till the full amount is paid and settled.
34. Since the Court stands convinced that the payment of \$7,000.00 by depositing into the Plaintiff’s Bank account on 27<sup>th</sup> June 2017 was only a part payment willingly made by the Defendant on account of the aforesaid debt, and there was no any sort of extortion as alleged or question of reference being involved in this process, the Defendant cannot claim the said sum by way of counter claim.

**G. Final Orders:**

- a. The Plaintiff's action succeeds.
- b. A Judgment in favour of the plaintiff for a sum of \$32,478.76 is entered against the Defendant.
- c. There shall be a pre-judgment interest at the rate of 3% from the date of the action till the date of this judgment.
- d. The Plaintiff is entitled for Post-judgment interest at the rate of 4% from the date of this judgment till the total amount is fully paid and settled.
- e. The defendant shall pay the Plaintiff a sum of \$3,500.00 being the summarily assessed costs



**A.M. Mohamed Mackie**  
**Judge**

At High Court Lautoka this 28<sup>th</sup> day of November, 2023.

**SOLICITORS:**

**For the Plaintiff:**

**M/S Selvin Singh, Lawyers, Barristers & Solicitors**

**For the Defendant:**

**Ravneet Charan, Lawyers, Barristers and Solicitors**