

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action HBC No. 134 of 2020

BETWEEN: **CHANDS TRUCKERS AND TRANSPORT** a registered
Company of Tokotoko Road, Navua, Fiji Islands.

PLAINTIFF

AND: **THUNDERSTRUCK LIMITED** a limited liability Company of
Nadi, Fiji Islands.

DEFENDANT

Counsel: Mr. Darayal R for Plaintiff
 Ms. Prasad L for Respondent

Date of Judgment: 29.01.2024

JUDGMENT

Introduction

1. Plaintiff filed this action seeking a sum of \$96,707.00 as unpaid sum for the road work for Defendant. Defendant admitted that Plaintiff was engaged to do some road clearing work for access to mining sites of Defendant. According to Plaintiff's evidence it had constructed a new road of 18 km but according to Defendant all roads were existing for logging on maps and Plaintiff was required to clear about 42 km access roads within three weeks, but had taken six months to do the work and rate for one kilometer was more than the rate paid for much harsher and difficult terrain.
2. So the dispute relate to invoices raised and the work done. Plaintiff had raised invoices for approximately \$300,000 and form that \$200,000 was paid. Through an email of 17.1.2020 CEO of Defendant had indicated that the invoices raised were excessive, and denied work done to justify payment.
3. Defendant had reluctantly agreed to pay a sum of \$50,000 as final payment in lieu of disputed sum of \$ 96,707.00 but Plaintiff had not unconditionally agreed to it hence that offer was also withdrawn.

4. Plaintiff needs to prove that it had conducted work for the invoices raised and also terms of the contract between the parties to prove its claim.
5. Plaintiff could not submit the terms of engagement and also work completed. So the Plaintiff failed to prove its claim.
6. During examination in chief the Plaintiff through its Director Abhinay Chand tendered 5 documents to show that:
 - a. A Statement of outstanding invoices were sent to the Defendant [PE1]
 - b. A Demand Notice was sent from his former Solicitors to the Defendant for the sum of \$96,707.00 [PE2]
 - c. An unsigned letter by a now former staff to Thunderstruck-Moape Navia was provided to the Plaintiff [PE3]
 - d. Emails between Moape and Abhinay Chand confirmed payment of \$50,000.00 [PE4]
 - e. An email of 17.01.2020 from Thunderstruck [Bryce Bradley] to Chands Truckers [Abhinay Chand] stated Thunderstruck's position regarding the Plaintiff invoices [PE5]
 - f. The Plaintiff alleged that he was engaged by the Defendant for constructing new roads for 18km for a sum of \$300,000.00.

Cross Examination of the Plaintiff

7. In cross examination the Plaintiff stated:
 - a. The Statement [PE1] only showed the invoices that were allegedly unpaid but the Plaintiff did not disclose the actual invoices or proof of work through evidence.
 - b. That whatever he works for the Defendant in the sum of \$96,707.00 were written down in some Delivery Docket which were never tendered into court as evidence.
 - c. That he had charged the hire of 2 D6 machines (hired by the Plaintiff from 2 of its subcontractors) to the Defendant without actual receipts and also explanation.
 - d. That he could not prove what work he had carried out on each of the 8 hour entries on his outstanding invoices from July 2019 till October 2019.

- e. That he had no written contract with Defendant and was unable to state what the terms of the Agreement as to payment were.
- f. The outstanding invoices were by Mr Abhinay Chand while he was sitting in his office.
- g. He could not prove whether he had given the Delivery Dockets to the Defendant to prove whether the work was done or not.
- h. That PE3 was an unsigned letter by Moape who was sacked by Defendant. He further alleged that there was a covering email to the letter but he did not produce the email in court.
- i. Had not tendered any evidence proving that he had suffered medically, psychologically or financially.

Examination in Chief of the Defendant

8. The Defendant gave evidence through its Director Bryce Bradley who stated as follows:
- a. The Defendant engaged the Plaintiff to undertake road clearing and gravel sheeting for existing roads for approximately 42km at its Korokayiu site in Viti Levu. These roads were used for logging but needed clearing/opening.
 - b. The Defendant is an exploration company whose activities involve mining and drilling sites identified for potential minerals and in his case, Zinc and Copper.
 - c. The budget for engaging the Plaintiff was \$150,000.00 and to date the Plaintiff accepted that he had been paid \$200,000.00.
 - d. The Defendant referred to her email sent to the Plaintiff [PE5] on 17.01.2020 in which she made clear that:
 - a. She disputed the Plaintiff's invoices as excessive.
 - b. Thunderstruck had already honored its obligations and paid the Plaintiff for the works it was engaged to do in the sum of approximately \$200,000.00 which was more than what was agreed.
 - c. There was no way of verifying what his invoices were referring to as it appears from the invoice that the Plaintiff's Trucks were left on without there being any mileage recorded or any record of what work was actually done.

- d. Upon returning to Fiji, she investigated the matter and saw that the Invoice were for hiring of Truck, Digger and tractor which the Defendant never did hire.

Analysis

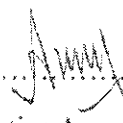
9. According to Plaintiff he used one Digger machine at the rate of \$65 an hour and D6 bulldozer \$150 an hour and a truck at the rate of \$85 an hour.
10. According to Plaintiff these were all hired by third parties but no evidence of such hiring or rates of the hiring produced.
11. According to him only 18 km road was to be constructed. For this no map or plan was produced.
12. It is not disputed that Plaintiff did work for Defendant and was paid a substantial sum of approximately \$200,000. If this was for new road construction, the cost for one kilometer will be in excess construction of a \$10,000 which is excessive and it is Plaintiff's burden to prove the same. If new road is constructed there must be plans for approval for such road etc.
13. Raising an invoice is not the proof that such work was done unless terms and scope and the payment was agreed between the parties prior to the contract of engagement with Defendant.
14. It had taken more than six to seven months to construct this road and according to Plaintiff's witness the cost of the construction was \$320,000 and admitted that they were paid approximately \$200,000.
15. There is a dispute as to the payment and according to Defendant they had overpaid. This was indicated to Plaintiff as early as 17.1.2020.
16. Plaintiff is relying on document marked P3 dated 3.12.2019, which is an unsigned letter admitting the claim of \$96,707.00 by Moape who was sacked by Defendant.. This is clearly in conflict with email of CEO of Defendant who had denied the claim of \$96,707.00. So this unsigned document cannot be accepted as acceptance of claim of \$96,707.00 by Defendant.
17. Plaintiff also rely on the offer of \$50,000 made by email of 17.1.2020. This was an unconditional offer as final settlement and this was made 'reluctantly'. This offer was not accepted as final settlement but Plaintiff as final payment. He was ready to accept it on without prejudice basis which was clearly not acceptance of the \$50,000 as final settlement. So it was a counter offer of Plaintiff, but Defendant had not accepted it.

18. So now the Plaintiff cannot claim said offer which was offered as final settlement, but Plaintiff based on desired it as without prejudice basis.
19. In the circumstances Plaintiff had failed to prove its claim of \$96,707.00 so the claim of the Plaintiff is struck off. Cost of this action summarily assessed at \$5,000 to be paid by Plaintiff to the Defendant.
20. Defendant had engaged Plaintiff to do some road, but the terms of such engagement not stated. As there is a dispute it is Plaintiff's burden to prove its work. Neither P1 which is an invoice nor P3 an unsigned letter proves Plaintiff's work. It is hard to imagine that a sum of more than \$320,000 will be incurred for a road building of 18 km without details of the work. This was not a building of a highway and only an access to off road machines or trucks. Plaintiff had failed to prove its claim and accordingly statement of claim is struck off. Cost of this action summarily assessed at \$3,000 to be paid by Plaintiff to Defendant within 21 days.

Final Orders

- a. Plaintiff's statement of claim struck off.
- b. Cost of this action summarily assessed at \$3,000 to be paid by Plaintiff to the Defendant within twenty one days.

Dated on 29th of this January, 2024


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Justice Amartunga

Judge