

IN THE MAGISTRATE'S COURT OF FIJI AT SUVA
CIVIL DIVISION

Civil Action No. 57 of 2018

BETWEEN: **UATE BALEILAKEBA BALEILEVUKA aka WATE**
BALEILAKEBA of Waibola Subdivision, Wailekutu, Lami in the
Republic of Fiji, Self Employed..

PLAINTIFF

AND: **PARVIR RATTAN**, of Sterling Place, Lami in the Republic of Fiji.

DEFENDANT

For the Plaintiff: M/S Oceanica IP

For the Defendant: M/S Capital Legal

JUDGEMENT

Introduction

- 1) As per the amended Statement of Claim dated 20-04-2021, Plaintiff claim in this cause inter alia:
 - a) a sum of \$18,000.00 owed under the Agreement by the Defendant,
 - b) a sum of 23,800.00 as incurred cost and expenses,
 - c) General damages for breach of agreement,
 - d) Interest.
- 2) The matter was taken up before this court for hearing on 07-03-2023. The plaintiff gave evidence and was cross examined by the Counsel for the defendant. That was being the sole witness, the plaintiff rest his case.
- 3) The Defendant made an application for non-suit and both parties were given time to file legal submission on it. This court by its ruling dated 09-10-2023, dismissed the application for non-suit and directed the defendant to inform him of his option to defend the claim. Subsequently, the Counsel for the defendant informed that they also rest their case without calling evidence. Both parties were granted time to file their respective submission and both parties adhered to it.
- 4) Both parties agreed and filed pre-trial conference minutes dated 18-10-2022 in which they agreed to the following facts:
 - a) The plaintiff was client of one Alice Shashi Lata. The late Alice Shashi Lata was a real estate agent and was running real estate business known as Fortune Paradise Real Estate and Paradise Island Real Estate.

- b) The defendant is a friend of late Alice Shashi Lata.
- 5) Parties identified 09 issued to be tried at the hearing. Those are:
- i) Whether , on or around 07th August 2015, the Defendant and / or through late Alice Shashi Lata approached the plaintiff for a loan of \$ 15,000.00 ?
 - ii) Whether the plaintiff and the defendant entered into a partly verbal and written agreement for a loan?
 - iii) Whether the plaintiff paid a sum of \$15,000.00 to the defendant on 07th and 11th August 2015, as a part of the agreement?
 - iv) Whether the defendant in compliance with the agreement surrendered the original Certificate of Title No. 15659 to the plaintiff ?
 - v) Whether the Defendant failed to pay the sum of \$ 18,000.00 to the plaintiff?
 - vi) Whether the Plaintiff was deprived of the sum of \$ 18,000.00 and incurred cost and expenses in the sum of \$ 23,000.00 ?
 - vii) Whether the plaintiff is entitled to general damages for breach of agreement?
 - viii) Whether the plaintiff is entitled to interest ?
 - ix) Whether the plaintiff is entitled to cost on indemnity basis ?
- 6) I now evaluate the evidence of the plaintiff to ascertain whether the plaintiff successfully proved his claim to the standard of balance of convenience by his evidence before this court.

Evidence of the case

- 7) In his evidence in chief, plaintiff marked a copy of his passport bio page and joint FNPF and FiRCA card as Exhibit 01 and Exhibit 02 respectively. He further stated that his claim was to retrieve the money he lent to Mr. Parvir Rattan, the defendant. He met defendant on Friday, 11th August 2015 morning at downtown Suva MacDonalDs outlet. He got to know the defendant through Ms. Alice Shashi Lata. She was his real estate agent at the time he was trying to buy some property in Nauva. On that day they Alice explained that the defendant desperately needed \$ 15,000.00 because of some debts or some issues he had. Then the defendant explained that he had some dealings with some Chinese people, but he was in debt. The defendant stated that “ If you give me \$15,000.00, I will give you \$18,000.00, -\$ 3,000.00 was the interest, commission ect. And if I don’t pay back then you own the title.” The defendant then gave him a copy of the title. Plaintiff obtained legal advice on it by his then solicitor. Later, plaintiff asked his nephew to check the title from the Title office and after a

while he informed the plaintiff that the title was good. Plaintiff stated that the title and the contract was good. He further stated that the contract was signed between plaintiff and defendant and witnessed by Alice and plaintiff's brother-in-law. It was a handwritten contract, done at McDonalds. It was given to the plaintiff's previous solicitors and now he do not have it. The solicitors had passed away. Plaintiff told defendant that he would give him money by cheques. After the written contract signed, they went to Westpac bank main branch. When he asked to write the cheque in the name of the defendant, he asked for cash. Plaintiff refused it. The cheque then drown in Alice's name. She took it to the counter to cash it. Plaintiff was standing behind Alice. He gave \$ 8,000.00 on that day and told the defendant that he will give the balance later. All he knew was that defendant had a conversation with Alice and plaintiff was giving money to the defendant through her. There was nothing in writing to confirm the 1st payment. Defendant gave him the title. The contract was signed by the defendant and plaintiff. Alice and plaintiff's brother-in-law witness it. But that contract is missing and plaintiff still looking for it. After the bank they went to Alice residence. There, they signed more documents. It was related to the initial contract he signed with the defendant earlier during that day. There was no receipts to confirm that the funds was given by the plaintiff. The document signed at Alice's residence on same day , 07-08-2015 is tendered as evidence as Exhibit No 03. Plaintiff then read the contents of that document. That document contained plaintiff's signature, his brother-in law Mr. Pauasum Biu's signature and Alice's signature. Alice and his brother-in law are deceased now. Most of his documents he had given to his previous solicitors. The next payment was made on the following Tuesday at the Westpac bank, as the previous transaction. Plaintiff , defendant and Alice was there. Plaintiff wrote another cheque for \$ 8,000.00 that make full amount to \$ 15,000.00. At this stage, plaintiff stated that the first payment he made was \$ 7,000.00. Then the plaintiff marked as evidence a Certificate of Title No.15659 as Exhibit 04, which was given to him on that day. Plaintiff met the defendant firstly at McDonalds then later at Raiwaqa where he was speaking with a Chinese lady. Plaintiff has given \$ 15,000,00 and was supposed to receive \$ 18,000.00 within 60 days from the defendant. After 60 days plaintiff did not receive the money, he tried so many times to recover it by engaging 3 different law firms to represent him. Salafa law firm, Apetia Seru and Oceanica IP. And paid \$ 500.00, \$ 2,500.00 and \$ 3,000.00 respectively. He had sent a demand notice to the defendant dated 04-07-2017 which is marked in evidence as Exhibit 05. Plaintiff paid Ocenica IP on 26-05-2017 \$ 1,000.00 and 16-03-2018 \$ 3,000.00, total was \$ 4,000.00 and marked the copies of the receipts as Exhibit 06. He also marked the defendant's joint FNPF card copy as Exhibit 07 and stated that it was given to him together with the documents he signed on the day at McDonalds. Plaintiff is seeking from the defendant \$18,000.00 and \$ 23,800.00 as cost and expenses that had been occurred to him for this case. Plaintiff is a permanent resident of United States of America, and for this case he had to travel back and forth about 4-5 times. It was in his passport. Copies of his passport marked as Exhibit No. 08.

- 8) In cross examination the plaintiff stated that he is a permanent residence in United State of America and also he has a house in Wailekutu, Lami. He is a Citizen of Fiji. He had come to Fiji about 07 times for this case. The claim is for breach of contract between him and the defendant. He doesn't have a copy of the contract he entered with the defendant and is claiming in this case. He don't have anything in writing to prove that he had a contract with the defendant. Plaintiff agreed that according to Exhibit 03, Alice Shashi Lata had stated that she had obtained a loan from plaintiff . In that document it was not written that the defendant was taking the loan. That document was signed by Alice and Pauasum Biu, both of them are passed away now. The defendant had not signed that document. It was suggested to the plaintiff that he had never met the defendant at McDonalds and that was rejected by the plaintiff. When the plaintiff was shown the copy of the title, he obtained advice from his Lawyer Mr. Apetia Seru and conduct a search at title office through his nephew and found that it was a legitimate title. Plaintiff after examining Exhibit 04 agreed that the title belong to the mother Ms. Sadhana Rattan. Defendant explained that his mother had passed away and he was not yet the owner of that title. Despite that the plaintiff entered into the agreement. Plaintiff agreed that in examination in chief he sated that on 07-08-2015 at Westpac Bank he paid \$ 7,000.00 and on following Tuesday he paid the balance \$8,000.00 in cheques. But in statement of claim , it was mentioned that \$ 8,000.00 was paid on 21-08-2015. Plaintiff reiterated that he had paid it on 11-08-2015. Plaintiff agreed that even after knowing that the title was not on the defendant's name he still went ahead with the transaction with Alice. The only document to prove that the defendant had taken the loan is the written contract which he entered into with defendant which he doesn't have now. At the time the contract was made, defendant was not there, and he did not have any knowledge at all. Exhibit 03 stated that he had paid \$ 7,000.00 and \$ 7,000.00 in two occasions. Plaintiff stated that he is claiming airfare, accommodation, food and travel expenses but he doesn't have any document to prove those costs. He also claim legal cost of the suit of which he had decided to file against the defendant. All his documents were handed over to late Mr. Seru and only today he had realized that his documents were missing.
- 9) In re-examination plaintiff sated that Exhibit 03 was signed on 07-082015 at Alice Shashi Lata's house and the defendant was not there. He claimed travelling expenses for him to come to this case in 2015 and 2019.
- 10) After leading the above evidence counsel for the plaintiff closed their case. Subsequent to the ruling on non- suit, the counsel for the defendant informed that they were resting their case without calling evidence.

Analysis and Findings

- 11) In order to prove the claim, the plaintiff has to establish that there was a contract between him and the defendant. He sated in his evidence that there was a written contract between him, and defendant executed on 07-08-2015 at McDonalds outlet, Suva. The witnesses to the said written contract was Mrs. Alice Shahsi Lata and his

brother-in-law Mr. Pauasum Biu both of them have passed away. The plaintiff was unable to submit the said written contract as evidence in court. He stated that it was given to his former solicitor who is a deceased now and the plaintiff does not possess a copy of it. Therefore, before this court, there is no written contract between plaintiff and defendant as evidence to consider the plaintiff's claim.

- 12) Plaintiff in his amended statement of claim stated as follows : "4. Parties then entered in to a partly verbal and written contract." In the absence of written contract, I now analyze the evidence of the plaintiff to ascertain whether there was any verbal contract between plaintiff and defendant. Plaintiff in his evidence stated that on 07-08-2015 at McDonalds, defendant told him as "If you give me \$15,000.00, I will give you \$18,000.00, -\$ 3,000.00 was the interest or commission. And if I don't pay back then you own the title." Plaintiff further stated that the defendant then gave him a copy of the title as well. Apart from the plaintiff's evidence, there is no evidence to prove that there was an offer and acceptance between the plaintiff and defendant. The documentary evidence submitted by the plaintiff do not establish that contention of the plaintiff. On the contrary, it prove that the so-called agreement was between late Ms. Alice Shashi Lata and the plaintiff. The document marked as Exhibit 03 which was drafted on a letter head of "Fortune Paradise Realtors " is reproduced here as follows:

"To Whom it may concern
07-August-2015

I, Alice Shashi Lata trading as Paradise Island 0012 is obtaining a loan of \$15,000.00
from Uate Baleilevuka for Mr. Parvir Rattan.

The loan \$7,000.00 to be given on 07-08-15. The loan \$7,000.00 to be given next week
with transfer signed.

Upon receiving the loan if it is in default of paying to Mr. Uate Baleilevuka will
result in transfer of the property."

- 13) The afore-mentioned Exhibit 03 was signed by Ms. Alice Shashi Lata and the Plaintiff. It was witnessed by Mr. Pauasum Biu.
- 14) Plaintiff in his evidence also stated that he had given money two occasions, and he had issued the cheques in the name of Alice Shashi Lata. There were no other documentary proof for the said payments.
- 15) Plaintiff also agreed in his cross examination that Certificate of Title marked as Exhibit 04 belong to the mother of the defendant Ms. Sadhana Rattan. He further stated that the defendant's mother had passed away and defendant was not yet the owner of that title. Despite that the plaintiff allegedly entered into a contract with the defendant. This contention devalues the credibility of the plaintiff's evidence.
- 16) In considering the above on the balance of convenience, this court is of the view that the plaintiff failed to establish that there was even a verbal contract existing between the plaintiff and the defendant.

17) The plaintiff in his submission relied upon the dictum of **Myers v Bavadra** [1993] FJHC 114; Hbc0183.931 (2 December 1993) . In that case his lordship Ashton-Lewis J. discussed the distinction between unilateral and bilateral contracts as follows: “

Acceptance of an offer by conduct giving rise to a bilateral contract should not be confused with an acceptance of an offer by conduct giving rise to a unilateral contract. The distinction is important because the terms and nature of the offer will usually determine whether the appropriate response by the conduct of the offeree is a condition precedent to the later formation of a binding contract between the parties or is a condition subsequent to the performance of an already existing contract between the parties. In the former, the conduct by the offeree is a condition precedent to the formation of a contract which will later come into being between the parties, whereas in the latter, the conduct by the offeree is a condition subsequent of an already existing unilateral contract between the parties. In other words, in a unilateral contract the conduct of the offeree is part of the performance of an already existing contract between the parties.

The real distinction between bilateral and unilateral contracts lies not in the nature of the act of acceptance, but in whether there is in fact a contract in existence between the parties before the performance of that act or not. In a bilateral contract there will be no such contract in existence. There will only be an executory, (or future) promise by the offeree, but in a unilateral contract the promise will be executed the moment it is made. In a bilateral contract the offer will only become binding on the offeror when the offeree accepts by giving his executory promise in return. Whereas, in a unilateral contract, performance of the requested acts by the offeree as stipulated by the offeror in his offer constitutes the offeree's acceptance of the offer”.

18) However, in the instance case plaintiff failed to establish any form of contract between himself and the defendant on the available evidence before this court. In considering the evidence of the plaintiff on balance of convenience, there are no offer and acceptance between the plaintiff and the defendant can be identified. There could have been an agreement between Alice Shashi Lata and the defendant on these alleged transactions, but no evidence to establish the same as well.

19) In light of the above analysis, I now answer the 09 issued to be tried that was identified by the parties as follows:

- i) Whether , on or around 07th August 2015, the Defendant and / or through late Alice Shashi Lata approached the plaintiff for a loan of \$ 15,000.00 ? - **Not established**
- ii) Whether the plaintiff and the defendant entered into a partly verbal and written agreement for a loan? - **No**
- iii) Whether the plaintiff paid a sum of \$15,000.00 to the defendant on 07th and 11th August 2015, as a part of the agreement? - **No**
- iv) Whether the defendant in compliance with the agreement surrendered the original Certificate of Title No. 15659 to the plaintiff ? - **No**

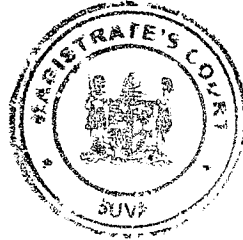
- v) Whether the Defendant failed to pay the sum of \$ 18,000.00 to the plaintiff? – **Not Applicable**
- vi) Whether the Plaintiff was deprived of the sum of \$ 18,000.00 and incurred cost and expenses in the sum of \$ 23,000.00 ? – **Not Applicable**
- vii) Whether the plaintiff is entitled to general damages for breach of agreement? – **Not Applicable**
- viii) Whether the plaintiff is entitled to interest ? – **Not Applicable**
- ix) Whether the plaintiff is entitled to cost on indemnity basis ? – **Not Applicable**

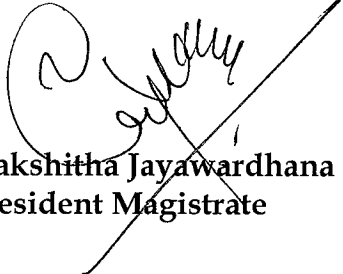
20) Accordingly, this court dismissed the statement of claim and plaintiff's case with cost.

Orders of the Court

- i) Statement of Claim and plaintiff's case is dismissed,
- ii) Plaintiff to pay the Defendant a cost of \$ 1,500.00 which is summarily assessed within 28 days hereof,

21) 28 days to appeal.




Lakshitha Jayawardhana
Resident Magistrate

At Suva, on this 11th day of April 2024.