

**IN THE HIGH COURT OF THE REPUBLIC FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 131 OF 2012**

**BETWEEN** : **AMUNUCA RESORT MANAGEMENT LIMITED** a limited liability company having its registered office at level 2, Mid City, Cnr Cumming Street and Waimanu Road, Suva, Fiji Islands.

**PLAINTIFF**

**AND** : **GRANT ROBERT GRAHAM and BRENDON JAMES GIBSON** of level 16, 45 Queen Street, Auckland, New Zealand in their capacity as joint and Several Receivers and Managers of **AANUKA ISLAND RESORT LIMITED** trading as **AMUNUCA ISLAND RESORT LIMITED**.

**DEFENDANTS**

**Before** : **Master M H Mohamed Ajmeer**

**Counsels** :

Mrs Naidu for for the Plaintiff

Mr W Pillay for the Defendants

Mr R. Singh for S K Davey, Intervenant-Petitioner

**Date of Hearing** : 19 June 2014

**Date of Ruling** : 19 June 2014

**INTERLOCUTORY ORDER**

[1] This is an interlocutory notice of motion filed 16 May 2014 by Intervenant-Petitioner, S K Davey (“the application”) seeking to be joined in this action. This application is supported with an affidavit of Sanjesh Kumar.

[2] The application is made pursuant to Order 15, rule 16 (a) (ii) of the High Court Rules, 1988. That rule provides:

*“16.-(1) Any proceedings, including proceedings to enforce a security by foreclosure or otherwise, may be brought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate; and any judgment or order given or made in those proceedings shall be binding on those persons unless the Court in the same or other proceedings otherwise orders on the ground that the trustees, executors or administrators could not or did not in fact represent the interests of those persons in the first-mentioned proceedings.*

***(2) Paragraph (1) is without prejudice to the power of the Court to order any person having such an interest as aforesaid to be made a party to the proceedings or to make an order under rule 15”*** (Emphasis provided).

- [3] An application under Order 15 may be made ex parte pursuant to Order 15, rule 1(2). However, the petitioner has filed its application inter parte. The application accordingly was duly served on all the parties returnable on 28 May 2014.
- [4] On the returnable date the court granted 21 days to the defendants to file and serve their affidavit in opposition and the matter was adjourned till today (19 June 2014). The plaintiff did not seek time to file its opposition.
- [5] When the matter was taken up today Mr Singh made application for orders in terms as there is no opposition filed against his application to intervene in these proceedings.
- [6] Mrs Naidu, counsel for the plaintiff indicated that the plaintiff will not object the application of the petitioner.
- [7] Mr Pillay, counsel for the defendant sought further 7 days to file their objection. Mr Singh objected to this application and he stated that last occasion the defendants were sufficient times to file their objection and further seven days application is unreasonable. I upholding Mr

Singh's objection declined to grant further time for the defendant to file their objection.

[8] According to the petitioner, it has the financial in the present case. In its supporting affidavit the petitioner stated, inter alia, that:

*"The plaintiff and the intervener entered into several verbal agreements between 8 October 2011 to 25 November 2011, where the plaintiff agreed to buy goods from the intervener on credit and made arrangement for the payments to be made later. Due to the said agreements the plaintiff owes the intervener sum of \$22,763.52", see para 8 of the affidavit.*

[9] The plaintiff did not object the petitioner's application to be joined as an intervener. The defendants also failed to file any objection, albeit obtained time to do so. The petitioner could have filed this application ex parte pursuant to Ord. 15, r. 1 (2) of the High Court Rules. The petitioner has set out the grounds of the application. Those grounds remain uncontested.

[10] For these reasons, I am convinced to grant orders in term of the interlocutory notice of motion (dated 14 May 2014) filed 16 May 2014. The matter is now adjourned to 21 July 2014 for mention only. Orders accordingly.



**Solicitors:**

Patel & Sharma, Barristers & Solicitors, Nadi for the Plaintiff  
Gordon & Company, Barristers & Solicitors for the Defendants.

**At Lautoka**

**19/06/14**

A handwritten signature in cursive script, appearing to read 'M H Mohamed Ajmeer', is written above a horizontal dotted line.

**M H Mohamed Ajmeer**  
**Master of the High Court**