

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 273 of 2016

BETWEEN: **SWEET RAINBOW INVESTMENTS (FIJI) LIMITED** a limited liability
company having its registered office at OFFICE OF Messrs Neel Shivam Lawyers,
22 Carrarvan Street, Suva, Fiji.

PLAINTIFF

AND: **MOHAMMED AFZAL KHAN** of Suva, Fiji, Solicitor.

FIRST DEFENDANT

AND: **SILVER FERN INVESTMENT LIMITED** a limited liability company having its
registered office at 1st Floor, Suite Nos. 8 & 9, Queensland Insurance Centre, Victoria
Parade, Suva in the Republic of Fiji, P O Box 549, Suva, Fiji.

SECOND DEFENDANT

BEFORE: **Master Vishwa Datt Sharma**

COUNSEL: **Ms. Devan** - for the Plaintiff
Mr. Devanesh Sharma - for the Defendant

Date of Ruling : **19th February, 2018**

RULING

*[Application by the 2nd Defendant seeking an order to strike out the Plaintiff's
Statement of Claim pursuant to Order 18 Rule 18 (1) (a) of the High Court
Rules, 1988 and the Court's Inherent Jurisdiction.]*

APPLICATION

1. This is the 2nd Defendant's Summons to Strike Out, and seeks the following orders:
 - (a) That the Plaintiff's Statement of Claim against the 2nd Defendant be dismissed;
 - (b) And or alternatively, that the 2nd Defendant be removed from this proceedings; and
 - (c) Costs of this application;
 - (d) Such other relief as this honourable Court deem just.

Upon the Grounds that:

2. The Plaintiff's Claim discloses no reasonable cause of action against the 2nd Defendant. The application is made pursuant to Order 18 Rule 18 (1) (a) of the High Court Rules 1988 and the Court's inherent jurisdiction.
3. The Plaintiff opposed the 2nd Defendant's Striking out application.
4. The application was heard in terms of the oral and written submissions made in this proceedings by the Plaintiff and the 2nd Defendant.

THE LAW and PRACTICE

5. The law on striking out pleadings and endorsements is stipulated at Order 18 Rule 18 of the High Court Rules 1988 which states as follows-

18.-(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-

- a) *it discloses no reasonable cause of action or defence, as the case may be; or*
- (b)
- (c)
- (d)

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1) (a).

6. In Paulo Malo Radrodro vs Sione Hatu Tiakia & Others, HBS 204 of 2005, the Court stated that:

"The principles applicable to applications of this type have been considered by the Court on many occasions. Those principles include:

- a. A reasonable cause of action means a cause of action with some chance of success when only the allegations and pleadings are considered - Lord Pearson in *Drummond Jackson v British Medical Association* [1970] WLR 688.
- b. Frivolous and vexation is said to mean cases which are obviously frivolous or vexations or obviously unsustainable - Lindley LJ in *Attorney General of Duchy of Lancaster v L.N.W Ry* [1892] 3 Ch 274 at 277.
- c. It is only in plain and obvious cases that recourse would be had to the summary process under this rule - Lindley MR in *Hubbuck v Wilkinson* [1899] Q.B. 86.
- d. The purpose of the Courts jurisdiction to strike out pleading is twofold. Firstly is to protect its own processes and scarce resources from being abused by hopeless cases. Second and equally importantly, it is to ensure that it is a matter of justice: defendants are permitted to defend the claim fairly and not subjected to the expense inconvenience in defending an unclear or hopeless case.
- e. "The first object of pleadings is to define and clarify with position the issues and questions which are in dispute between the parties and for determination by the Court. Fair and proper notice of the case an opponent is required to meet must be properly stated in the pleadings so that the opposing parties can bring evidence on the issues disclosed - *ESSO Petroleum Company Limited v Southport Corporation* [1956] A.C at 238" - *James M Ah Koy v Native Land Trust Board & Others - Civil Action No. HBC 0546 of 2004*.
- f. A dismissal of proceedings "often be required by the very essence of justice to be done"..... - Lord Blackburn in *Metropolitan - Pooley* [1885] 10 OPP Case 210 at 221- so as to prevent parties being harassed and put to expense by frivolous, vexations or hopeless allegation - *Lorton LJ in Riches v Director of Public Prosecutions* (1973) 1 WLR 1019 at 1027"

2ND DEFENDANT'S CASE

7. Relied on the written submissions.
8. Submitted that the Plaintiff's Statement of Claim discloses no reasonable cause of action against the 2nd Defendant.
9. The only reference to the 2nd Defendant is made at paragraphs 3, 4, 13(iv), and 14.
10. The claim does not plead any particulars as required under the law and therefore there is a clear breach of Order 18 Rule 11 of the High Court Rules, 1988 which deals with particulars of pleadings.
11. The paragraphs in the Statement of Claim that mentions the 2nd Defendant are merely statements rather than any claims being made against the 2nd Defendant.
12. Referred Court to the interlocutory ruling delivered on 30th May, 2017.

PLAINTIFF'S CASE

13. Adopted the written submissions.
14. Referred Court to paragraph 15 and 16 of the Statement of Claim.
15. There is nexus between the 1st and 2nd Defendants.
16. Reference also made to paragraphs 11 and 12 of the Statement of Claim.
17. That the 1st Defendant's wife is a majority shareholder in the 1st Defendant's Company.
18. That the property exchange orchestrated by the 1st Defendant,
19. That there is some allegation against the 2nd Defendant at paragraph 15 of the Statement of Claim.
20. That the 2nd defendant is not a Bona Fide purchaser of the property.
21. The 2nd Defendant's application to be struck out.

ANALYSIS and DETERMINATION

22. The only issue for this Court to determine is-
'Whether the Plaintiff's Statement of Claim should be struck out since the claim has no reasonable cause of action against the 2nd Defendant?'
23. The Plaintiff's claim against the Defendants in summary are seeking for the following relief-
 - An order for specific performance of the Sale & Purchase Agreement dated 05th March, 2013;
 - A Declaration that the 1st Defendant is in breach of the Sale & Purchase Agreement dated 05th March, 2013; and
 - An order requiring the 2nd Defendant to transfer Certificate of Title No. 41486 to the Plaintiff.
24. The 2nd Defendant's contention is that the Writ of Summons and the Statement of Claim does not have a cause of action against the 2nd Defendant. Further, if there was any dealing in respect of the subject Land contained and described in Certificate of Title No. 41486 was between the Plaintiff and the 1st Defendant.
25. It is for the Plaintiff to establish that he has a Cause of Action in this case against the 2nd Defendant in terms of the facts and the Pleadings filed herein.

26. On the other hand, the 2nd Defendant must establish that the Plaintiff does not have a Cause of Action in this case against him.
27. Reference is made to the following notes to *Order 17 r19 of the Supreme Court Practice (UK) 1979 Vol. 1 or 18/19/11* on what is meant by the term 'a reasonable cause of action' sufficiently provides the answer to the applications.

".....A reasonable cause of action means a cause with some chance of success when only the allegations in the pleadings are considered (per Lord Pearson in Drummond Jackson v British Medical Association [1970] 1 WLR, 688; [1970] 1 All ER 1094 CA). So long as the statement of claim or the particulars (Davey v Bentinck [1893] 1 QB 185) disclose some cause of action, or raise some question fit to be decided by a Judge or a jury, the mere fact that the case is weak, and not likely to succeed is no ground for striking out (Moore v Lawson (1915) 31 TLR 418, CA.; Wenlock v Maloney [1965] 1 WLR 1238 1 W.L.R. 1238 [1965] 2 All ER 871, CA)...."

28. Reference is also made to Lindley M.R. in *Hubbuck & Sons Ltd v Wilkinson, Heywood & Clark Limited* [1899] 1QB 86 at page 91 said:

".....summary procedure is only appropriate to cases which are plain and obvious, so that any master or judge can say at once that the statement of claim as it stands is insufficient, even if proved, to entitle the plaintiff to what he asks. The use of the expression "reasonable cause of action" in rule 4 shows that the summary procedure there introduced is only intended to be had recourse to in plain and obvious cases".

29. The 2nd Defendant Company is the current registered proprietor of a property situated at Magalevu Road, Denarau, Nadi.
30. The 1st Defendant agreed to sell and the Plaintiff agreed to purchase three and a half acres of land being part of Certificate of Title No. 16663, Lot 1 on Deposit Plan No. 8805 for the sum of \$650,000. Parties entered into a Sale & Purchase Agreement on 05th March, 2013.
31. Pursuant to the terms of the Sale & Purchase Agreement, the Plaintiff paid \$50,000 and the 1st Defendant advised the Plaintiff by letter dated 27th June, 2016 that he was ready and willing to proceed with the transfer of the said property.
32. On or about the 22nd of August, 2014 caused the new Certificate of Title No. 41486 to be transferred to one Ajit Dushiyant Rahut.
33. On or about the 1st of December, 2014, Ajit Dushiyant Rahut caused to transfer Certificate of Title No. 41486 to the 2nd Defendant Company and consideration stated was stipulated as \$120,000.

34. The only reference that the Plaintiff makes with regards to 2nd Defendant are at paragraphs 3, 4, 13(iv) and 14 of the Plaintiff's Statement of Claim.
35. Aforesaid paragraphs that mentions and makes reference to the 2nd Defendant are merely statements and not making any particular claims against the 2nd Defendant.
36. The agreement for sale of the land was entered into between the Plaintiff and the 1st Defendant.
37. It was the 1st Defendant who failed in his bid (refer to paragraph 12) to disclose to the Plaintiff and/or his Solicitor's details of the new Certificate of Title.
38. The 2nd Defendant did not have anything to do with the Plaintiff.
39. The 2nd Defendant in fact by an agreement made on or about 22nd August, 2014 caused the new Certificate of Title No. 41486 to be transferred to Ajit Dushiyant Rahut who was an acquaintance and personally known to the 1st Defendant. (Reference made to paragraph 13(iii) of the statement of claim) and on or about 1st December 2014 it was Ajit Dushiyant Rahut who caused to transfer Certificate of Title 41486 to the 2nd Defendant for the consideration sum of \$120,000. (Reference made to paragraph 13(iv) of the statement of claim).
40. The 2nd Defendant via Affidavit in Response to Rajendra Sami's Affidavit deposed by Ashwini Kanima Kuar deposed on 08th December, 2016, states at paragraph 20 "*.....that any alleged and purported dealing that the Plaintiff may have had with the 1st Defendant is a matter between the Plaintiff and the 1st Defendant and therefore do not relate to the 2nd Defendant as the 2nd Defendant is not a party to any dealing with the Plaintiff whatsoever.....*".
41. It is appropriate that I mention here and bring it to the attention of the Plaintiff's counsel that she became very aware of the fact after the delivery of the interlocutory judgment by the court on 30th May, 2017 that the Statement of Claim did not have full particulars particularised in terms of the 2nd Defendant's position in this matter. Therefore, it became apparent and prudent for her to make an appropriate application to amend the Plaintiff's Statement of Claim accordingly. This should have been done prior or simultaneously to the 2nd Defendant filing an application for striking out of the Plaintiff's Statement of Claim.

IN CONCLUSION

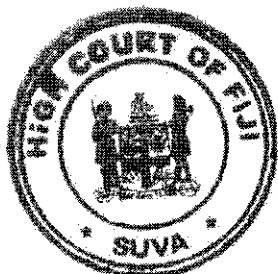
42. For the aforesaid rationale, I find that the Sale and Purchase Agreement executed was between the Plaintiff and the 1st Defendant only and has nothing to do with the 2nd Defendant.


43. I find that there is no reasonable cause of action that can be found or ascertained within the Plaintiff's Statement of Claim against the 2nd Defendant. This cannot be denied by the Plaintiff.
44. Therefore, the 2nd Defendant's application seeking an order to strike out the Plaintiff's Statement of Claim against the 2nd Defendant succeeds.
45. It is only appropriate for obvious reasons that as a result of my finding to strike out the Plaintiff's Writ of Summons and the Statement of Claim against the 2nd Defendant that I am inclined to grant costs to the succeeding party. The Plaintiff is therefore ordered to pay a summarily assessed costs of \$1,000 to the 2nd Defendant within 14 days hereof.
46. Accordingly, I proceed to make the following orders-

FINAL ORDERS

- (i) The 2nd Defendant's application to strike out the Plaintiff's Writ of Summons and the Statement of Claim succeeds.
- (ii) The Plaintiff's Writ of Summons together with the Statement of Claim against the 2nd Defendant is hereby dismissed.
- (iii) Cost against the Plaintiff on this application is summarily assessed at \$1000 to be paid by the Plaintiff to the 2nd Defendant within 14 days' time frame.
- (iv) The matter to proceed between the Plaintiff and the 1st Defendant only and adjourned for further directions on the next cause.
- (v) Orders accordingly.

Dated at Suva this 19th day of February, 2018.




MR VISHWA DATT SHARMA
Master of High Court, Suva

cc: Neel Shivam Lawyers, Suva.
R Patel Lawyers, Suva.

