

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 144 of 2016

BETWEEN : **MOHAMMED IMRAN QAMER** of Lot 17, Kings Road, Nasinu, Businessman.

PLAINTIFF

AND : **CREDIT CORPORATION (FIJI) LIMITED** a limited liability company having its office at Credit House, 10 Gorrie Street, Suva, Fiji.

DEFENDANT

BEFORE: **Master Vishwa Datt Sharma**

COUNSELS: No appearance of the Plaintiff/Counsel
Mr. Tuitoga for the Defendant

DATE OF RULING: 12th July, 2018

RULING

[Application by the 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 **Defendant's Summons to Strike Out**, and seeks the following orders:
 - (a) *That the Statement of Claim filed herein on 20th June 2016 be wholly struck out under Order 18 Rule 18 (1)(a) of the High Court Rules 1988 and/or under the inherent jurisdiction of this honourable Court;*
 - (b) *That the Plaintiff pay the Defendant costs of this application and all incidental costs hereto.*

Upon the Ground that:

2. *That the Statement of Claim filed herein on 20 June 2016 discloses no reasonable cause of action against the Defendant.*
3. *That the Defendant relies on Order 18 Rule 18 (1) (a) of the High Court Rules 1988 and/or the inherent jurisdiction of this Honourable Court.*
4. *The Plaintiff opposed the Defendant's Striking out application.*
5. *On 06th September, 2016 the Plaintiff was granted 14 days' time to file and serve his Affidavit Response. The Plaintiff failed to file and serve any Response.*
6. *The application was heard in terms of the oral and written submissions made in this proceeding by the Defendant only. There was no appearance by the Plaintiff.*

THE LAW and PRACTICE

7. 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).

8. 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 vexatious 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, vexatious or hopeless allegation - Lorton LJ in Riches v Director of Public Prosecutions (1973) 1 WLR 1019 at 1027"*

DEFENDANT'S CASE

7. Defence relied on the written submissions filed herein.
8. Submitted that the Plaintiff's Statement of Claim discloses **no reasonable cause of action** against the Defendant and should be struck out in the interests of justice.
9. That the subject of this Action is also the subject of *Suva High Court Civil Action No. 89 of 2013- Credit Corporation (Fiji) Limited vs Mohammed Imran Qamer*. The Plaintiff should explain why a Counter-Claim was not filed in this related action to avoid duplicity or why this action was filed after the Contempt Ruling dated 09th December, 2015.
10. That it is unclear what cause or causes of action have been pleaded or what legal issues are raised.
11. That as far as one can understand, the Plaintiff's complaint, it is that somehow through alleged inaction by the Defendant he has suffered some unidentified breach of his unidentified rights.

12. It is clear that the Defendant provided the Plaintiff with a loan facility as mentioned in paragraph 3 of the statement of claim. How and why should a financial institution such as the Defendant provide an undertaking as to the road worthiness of a vehicle it is financing?
13. That the elements of a sustainable cause of action in negligence or any other cause of action are not present in the Plaintiff's Claim nor are there legal issues apparent on the pleadings. There might be moral issues-but we must remember that this is a Court of Law. Moral wrongs do not and cannot amount to cause of action in Law.

ANALYSIS and DETERMINATION

14. 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 Defendant?'

15. The **Defendants** contention is that the Writ of Summons and the Statement of Claim does not disclose any **cause of action** against the **Defendant and should be struck out in the interest of Justice**. The **Defendant** further submitted that the subject of this action is also the subject of *Suva High Court Civil Action No. 89 of 2013* - where *Credit Corporation (Fiji) Limited* is the **Plaintiff** and *Mohammed Imran Qamer* the **Defendant**. That the Plaintiff should explain why a **Counter-Claim** was not filed in the related Action *HBC 89 of 2013* after the Contempt Ruling dated 09th December, 2015. That it was totally unclear what cause or causes of action have been pleaded or, in other words used by the *Court of Appeal*, in *Buli*, what "**legal issues**" are raised on the pleaded facts?
16. It is for the **Plaintiff** to establish that he has a **Cause of Action** in this case against the **Defendant** in terms of the **facts** and the **Pleadings** filed herein.
17. On the other hand, the **Defendant** must establish that the **Plaintiff** does not have a **Cause of Action** in this case against him.
18. 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 Moloney [1965] 1 WLR 1238 1 W.L.R. 1238 [1965] 2 All ER 871, CA)...."

19. 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".

20. The purpose of the Court's Jurisdiction to strike out pleadings is two-fold. First, it is to protect its own processes and scarce resources from being abused by hopeless cases. Second and equally importantly, it is to ensure that as a matter of Justice, Defendants are permitted to defend a claim fairly and are not subjected to the expenses and inconvenience of defending an unclear or hopeless case- *Civil Action No. HBC 214 of 2012* citing *Paul Malo Radrodro v Sione Hatu Tiakia and Others-HBC 204 of 2005* succinctly summarised the principles as follows-

"The law with regards to striking out pleadings is not in dispute. Apart from truly exceptional cases, the approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be proved. If a legal issue can be raised on the facts as pleaded then the courts will not strike out a pleading and will certainly not do so on a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of a factual contention. It follows that an application of this kind must be determined on the pleadings as they appear before the court."

22. The Plaintiff apprised Court that the subject of this action is also the subject of *Suva High Court Civil Action No. 89 of 2013* - where *Credit Corporation (Fiji) Limited* is the Plaintiff and *Mohammed Imran Qamer* the Defendant. That the Plaintiff should explain why a Counter-Claim was not filed in the related Action *HBC 89 of 2013* after the Contempt Ruling dated 09th December, 2015. That it was totally unclear what cause or causes of action have been pleaded by the Plaintiff.
23. The Defendant must realise that *HBC 89 of 2013* was instituted by *Credit Corporation (Fiji) Limited* against *Mohammed Imran Qamer*. The Plaintiff by its amended statement of claim sought the following relief against the Defendant-
- (i) Judgment in the sum of \$224,475-03;
 - (ii) Pre-Judgment interest 10% per annum;
 - (iii) Post Judgment interest 4% per annum; and
 - (iv) Indemnity Costs.
24. The above Action *HBC 89 of 2013* was heard and determined by the Court on 31st May, 2018. This court dismissed the Plaintiff's Action and ordered costs of \$5,000 against the Plaintiff.
25. Whereas, in the current Action before court *HBC 144 of 2016*, the Plaintiff's claim against the Defendant in summary are seeking for the following relief-
- Special and General Damages to be assessed by the Court;
 - Financial Loss in the sum of \$500,000;

- Interest pursuant to Section 3 of the Law Reform (Miscellaneous) (Interest) Act Cap 27;
 - Post Judgment interest; and
 - Costs.
26. The Plaintiff does not deny the fact that he sought loan facility from the Defendant for the purchase of certain vehicles as outlined in his claim. The Plaintiff provided security for the loan facility provided and thus the Defendant provided the Plaintiff's loan facility on the arrangements outlined in his claim.
27. The Plaintiff stated in his claim that he had **suffered substantial financial loss** due to the **Defendant's unlawful action** in completely depriving and/or denying the Plaintiff from **proprietary ownership of assets** and **earning capability** from his logging and timber **contract** supplies.
28. **The test of reasonable cause of action** does not require the court to determine whether the cause of action in the pleadings will eventually succeed. The **only issue** to be considered is that the **facts pleaded in the pleadings disclose some cause of action or a dispute** fit to be decided by the court as per the case of *Bano v Rashid [2014] FJHC 266*.
29. Obviously, it cannot be disputed by the **Defendant** that the **Plaintiff** does raise **dispute** within the statement of claim and thus alleges 'that that the Defendant had put the Plaintiff's property under Mortgagee sale action without disclosing the Unimproved Capital Value to properly determine the value of the Plaintiff's property which is more than the loan amount. The Defendant had failed to respect the Plaintiff's rights and interests as far as his business was concerned taking into consideration his huge financial loss as the Defendant had repossessed all motor vehicles as well the said property without disclosing their value thereby denying the Plaintiff his rights protected under the Consumer Act.
30. There exists **triable issues** within the **pleadings** which needs to be heard and determined accordingly. Not only that, the Plaintiff is therefore also seeking for **Special** and **General Damages** as well as **financial loss** that he alleges to have suffered.
31. I find for the aforesaid rational that he Plaintiff's statement of claim cannot be struck out summarily as sought by the Defendant and remains intact.
32. It is only appropriate for above reasons that as a result of my **finding** not to strike out the Plaintiff's Writ of Summons and the Statement of Claim against the **Defendant** that I am inclined to grant costs to the succeeding party (**Plaintiff**).

However, the **Plaintiff/Counsel** was not present to defend and/or counter the **Defendant's** striking out application, but that does not mean that this court having heard the application and upon making the above finding that the Plaintiff should not be given an opportunity to put forward his substantive case in terms of evidence and allow the court to determine the action in a just and fair manner accordingly.

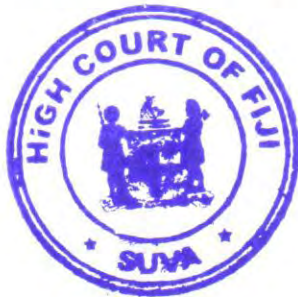
The **Defendant** is therefore ordered to pay a summarily assessed costs of **\$650** to the **Plaintiff** within 14 days hereof.

33. Accordingly, I proceed to make the following final orders-

FINAL ORDERS

- (i) The Defendant's application to strike out of the Plaintiff's Writ of Summons and the Statement of Claim fails.
- (ii) The Plaintiff's Writ of Summons together with the Statement of Claim against the Defendant remains intact.
- (iii) Cost against the Defendant on this application is summarily assessed at \$650 to be paid by the Defendant to the Plaintiff within 14 days' time frame.
- (iv) The matter to proceed with the next cause of action expeditiously and stands adjourned for further directions on 12th July, 2018 @ 9 am.
- (v) Orders accordingly.

Dated at Suva this 12th day of July, 2018



.....
MASTER
VISHWA DATT SHARMA

cc: MIQ Lawyers, Suva
Haniff Tuitoga, Suva