

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 150 of 2015

BETWEEN: **SILVER BEACH PROPERTIES LIMITED** is duly registered company having its registered office at The Naviti Resort, Korovlevu Coral Coast.

PLAINTIFF

AND: **WILLIAM IHAKA** of Sandal Wood Nadi and 1 Davison CRT Melbourne Australia.

DEFENDANT

BEFORE: Master Vishwa Datt Sharma

COUNSEL: Mr. Ronald Singh - for the Plaintiff
 Mr. Vuataki - for the Defendant

Date of Ruling: 30th July, 2018 @ 9am

RULING

(Application by the Plaintiff seeking Judgment on Admission pursuant to Order 27, Rules 3 of the High Court Rules 1988, and the inherent jurisdiction of the High Court.)

A. INTRODUCTION

1. This is the Plaintiff's application seeking the following orders-
 - a. Judgment against the Defendant by admissions the Defendant caused the fire; and
 - b. Damages to be assessed.
2. The application is made pursuant to Order 27 Rule 3 of the High Court Rules, 1988 and the inherent jurisdiction of the High Court.
3. The Defendant opposes the Plaintiff's Application and filed an Affidavit to this effect.

B. FACTS

4. Silver Beach Properties Limited (**Plaintiff**) states that it has suffered substantial damage as a result of a fire started by the Defendant. The Defendant has filed several documents in this matter.
5. The Plaintiff is seeking orders in terms of Summons for judgment on admission be entered in its favour against the Defendant in the sum of \$148,286.
6. The Defendant opposes the application on the following basis-
 - *That there are no admissions;*
 - *That he suffers from sleep apnea; and*
 - *That he has a counter-claim against the Plaintiff.*
7. The Defendant submitted that the damage was accidently caused or wholly caused or contributed to by the negligence of the Plaintiff.
8. He further stated that the Security Guards threatened the life of the Defendant causing him to flee for his life towards the room, locked it and pushed the bed against the door and also blocked the other door with furniture when Security Guards came running after him, tried to get through the door and were swearing at the Defendant.
9. Due to such exertion and fear the Defendant felt the urge for a cigarette to calm his nerves and distraught state, lit a cigarette and took a few puffs to relax.
10. The Defendant was suffering from sleep apnea and woke up to find part of the mattress he was sleeping on, on fire and could not put out the mattress fire as the Plaintiff had not put a slow

burning non-combustible mattress on the bed in the room, nor a fire extinguisher, nor an overhead water sprinkler.

11. The fire spread to other parts of room 602 and the other two rooms averred by the Plaintiff because of Plaintiff's negligence.

C. LAW

12. *Order 27 rule 3* states as follows:

"Where admissions of fact or of part of a case are made by a party to a cause or matter either by his or her pleading or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he or she may be entitled to without waiting for the determination of any other question between the parties and the Court may give such judgment or make such order on the application as it thinks just."

D. ANALYSIS AND DETERMINATION

13. It is not in dispute that the Defendant was a paying guest at the Plaintiff's hotel at **The Naviti Resort** in Sigatoka. He was assigned with room no. 602 which was located on the ground floor and was also connected to room no. 601. Directly above room no. 602 was room no. 614. On 07th May, 2014, all the three (3) rooms were damaged by a fire.
14. The Defendant admits paragraphs 6 (e) ,6 (f), paragraph 31 and 32 of the Defendant's Statement of Defence, and that he fell asleep on the bed in room no. 602 with a lit cigarette in his hand which caused the fire.
15. The Defendant in his Defence admits lighting a cigarette which was due to the contributory factors by the Plaintiff which is set out at paragraphs 6 (a) - (f) of the Defendants Defence.
16. According to the **Defendant**, these factors at paragraphs 6 (a) - (f) are **triable issues** and needs to be heard at a full trial in terms of oral evidence. The Defendant's Defence raises serious issues of dispute. He adds that the Plaintiff's claim that the Defendant **intentionally** ignited a fire and was threatening to burn 600 blocks, however, the **Defendant's Defence** is that the Defendant suffered from sleep apnea and due to the contributory factors by the Plaintiff and their agents, the Defendant fell the urge to light a cigarette, which he did and fell asleep. The **Defendant clarifies** that there is **no form of admission** on his part to the Plaintiff's claim as outlined in his **Defence**.
17. The Defendant has filed and served his **Statement of Defence** and **Counterclaim**. He denies the Plaintiff's claim at paragraph 6 and said that the damage was accidentally caused or wholly caused or contributed to by the negligence of the Plaintiff. The Defendant in his counterclaim is seeking orders for Special, General and Exemplary Damages.

18. The decision to enter a judgment on **admission** or not is a **discretionary** matter for the Court. However the "*White Book*" at page 521 states as follows-

27/3/7

"The jurisdiction of the Court is discretionary but in the absence of reason to the contrary the order is made so as to save time and costs".

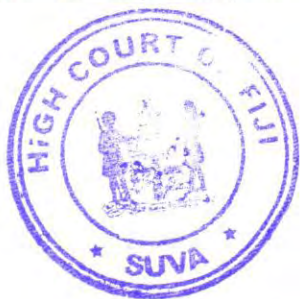
19. In the Supreme Court Practice (White Book) on Order 27 "*Admissions*" it states at paragraph 27/3/4/ (at page 502) "*Where the defendant admits a claim but pleads a counterclaim the plaintiff may obtain leave to sign judgment of the terms that the money is to be paid into Court, or that there is a stay of execution pending the trial, or it may be refused according to circumstances (see Showell v Bouron(1883) 52 L.J.Q. 284; Mersy.etc..Co. V Shuttlewoth(1883) 11 Q.B.D. 531).*"
20. It is clear that discretion is granted to court in determining this issue when there is a counter claim. It is to be noted that every counterclaim will not be regarded equally and each and every counterclaim has to be considered with the circumstances of the case in determining the issue of entering a judgment on admissions when there is a counterclaim. The bona fides of the claim has to be considered from the materials available to the court.
21. Taking into consideration the Plaintiff's Statement of Claim, Defendant's Statement of Defence and Counterclaim together with affidavit evidence and written submissions, I find that there is a **Dispute** and existence of **triable issues**.
22. The court has to hear the evidence of the parties to this proceedings in terms of the existing **Dispute and Triable issues** that needs to be ironed out at a trial and not summarily as sought for herein.
23. In all just and fairness, the Defendant needs to be given a day in court to defend his case as he thinks appropriate in the circumstances.
24. Accordingly, for the aforesaid rational, I have no alternative but to dismiss the Plaintiff's application seeking Judgment against the Defendant by admissions and Assessments of Damages.
25. Parties to move on with the next cause of action expeditiously and enter the action for trial.
26. The Plaintiff to pay the Defendant summarily assessed costs of \$650 within 14 days timeframe.

D. **CONCLUSION**

27. **In the circumstances the Plaintiff's application seeking Judgment against the Defendant by admissions and Damages to be assessed hereby fails and is accordingly dismissed.**

28. Cost for the Defendant summarily assessed at \$650 to be paid by the Plaintiff within 14 days timeframe.

Dated at Suva this 30th Day of July, 2018



Master
MR VISHWA DATT SHARMA

cc. Mr. Ronald Singh of Munro Leys, Suva
Mr. Vuataki of Vuataki Law, Suva