

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 90 of 2017

BETWEEN: **FINANCE PACIFIC CORPORATION LIMITED** a limited liability company
having its registered office at Suite 3, Garden City, Business Park, Grantham
Road, Suva.

PLAINTIFF

AND: **BRIGHT STAR INVESTMENT LIMITED** a limited liability company having
its registered office at Tapoo Building Main Street, Queens Road, Sigatoka in
Fiji.

DEFENDANT

BEFORE: **Master Vishwa Datt Sharma**

COUNSEL: **Ms. Preetika** - for the Plaintiff
Mr. Haniff - for the Defendant

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

RULING

*[Application by the Plaintiff seeking an order to strike out the Defendant's Statement
of Defence pursuant to Order 18 Rule 18 And Order 25 of the High Court Rules,
1988 and the Court's Inherent Jurisdiction.]*

APPLICATION

1. This is the Plaintiff's Summons to Strike Out the Defendant's "Statement of Defence" on the following grounds:
 - (a) *That it discloses no reasonable defence to the Plaintiff's Statement of Claim;*
 - (b) *That it is Scandalous, Frivolous and/or Vexatious;*
 - (c) *That it may Prejudice, embarrass or delay the fair trial of the action; AND*
 - (d) *That it is an abuse of process of the Court.*
2. The application is made pursuant to *Order 18 Rule 18 and Order 25 of the High Court Rules 1988* and *the Court's inherent jurisdiction.*
3. The Plaintiff strongly **opposed** the Defendant's Striking out application.
4. The application was heard in terms of the **oral and written submissions** made in this proceeding by the Plaintiff and the 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) it is scandalous, frivolous or vexatious; or*
- (c) it may prejudice, embarrass or delay the fair trial of the action; or*
- (d) it is otherwise an abuse of the process of the court;*

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).

BACKGROUND

6. The Plaintiff's claim is essentially in negligence. The claim alleges that Defendant carried out construction work adjacent to the Plaintiff's property without the approval of the Suva City Council. The Plaintiff further alleges that the Defendant encroached on the Plaintiff's property and further, that the Defendant trespassed on the Plaintiff's land.

The Defendant denied each and every allegation in the claim.

ANALYSIS and DETERMINATION

7. Following are Five (5) issues to be deliberated upon and determined by this Court-

1st issue- Whether the Defendant's Statement of Defence discloses no reasonable defence to the Plaintiff's Statement of Claim?

2nd Issue- Whether the Statement of defence is Scandalous, Frivolous and/or Vexatious?

3rd Issue- Whether the statement of defence may Prejudice, embarrass or delay the fair trial of the action?

4th issue- Whether the statement of defence is otherwise an abuse of the process of the court? ANFD

5th issue- Whether the statement of defence should be struck out for want of prosecution?

8. It is appropriate for me to deal with the 5th issue hereinabove first "Whether *the statement of defence should be struck out for want of prosecution?*"

The Plaintiff's Counsel has not specifically stated in her application under what particular provision(s) of the *Order 25 of the High Court Rules, 1988* is she making her application on. As far as this court is concerned, since the Plaintiff has filed her application seeking an order to strike out the statement of defence is that she is relying on *Order 25 Rule* instead, although she must be specific.

Order 25 Rule 9 states as follows-

"9. - (1) If no step has been taken in any cause or matter for six months then any party on application or the Court of its own motion may list the cause or matter for the parties to show cause why it should not be struck out for want of prosecution or as an abuse of the process of the Court.

(2) Upon hearing the application the Court may either dismiss the cause [or] matter on such terms as may be just or deal with the application as if it were a summons for directions.'

9. In order for me to deal with and determine the Plaintiff's Striking Out Summons on the remaining grounds 1st-4th inclusive mentioned hereinabove, I have to make reference to *Order 12 and 13 of the High Court Rules, 1988* which provides as follow-

Admissions and denials (O.18, r.12)

12.-(1) *Subject to paragraph (4), any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 13 operates as a denial of it.*

(2) *A traverse maybe made either by a denial or by a statement of non-admission and either expressly or by necessary implication.*

(3) *Subject to paragraph (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them.*

(4) *Any allegation that a party has suffered damage and any allegation as to the amount of damages is deemed to be traversed unless specifically admitted.*

Denial by joinder of issue (O.18, r.13)

13.-(1) *If there is no reply to a defence, there is an implied joinder of issue on that defence.*

(2) *Subject to paragraph (3)-*

(a) *there is at the close of pleadings an implied joinder of issue on the pleading last served, and*

(b) *a party may in his pleading expressly join issue on the next preceding pleading.*

(3) *There can be no joinder of issue, implied or express, on a statement of claim or counterclaim.*

(4) *A joinder of issue operates as a denial of every material allegation of fact made in the pleading on which there is an implied or express joinder of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express joinder of issue operates as a denial of every other such allegation.*

10. The Plaintiff's contention with regards to the above-mentioned grounds when summarized are as follows-

- *On the face of pleadings, it is apparent that the Statement of Defence was only filed to comply with the limits to file the Defence;*
- *The Defendant has failed to make any efforts to find facts nor any application to ascertain documents necessary to file to plead and file proper Statement of defence;*
- *The Defendant has only denied all allegations and had put the Plaintiff to strict proof;*
- *The Defendant has failed to conduct any search with the Titles office, write to Town Council to ascertain whether the allegations put to it is correct or not therefore, has generally denied all allegations in the Statement of Claim.; AND*

- *The Plaintiff is required to file a Reply to Defence to narrow issues, however, it is impossible for the Plaintiff to Reply to the Statement of Defence apart from repeating the contents of the Statement of Claim.*
11. The **Defendant's contention** as per his **Statement of Defence** can be summarized as follows-
- Although the Plaintiff has not specified in the Plaintiff's summons, the Plaintiff must be relying on Order 18 Rules 18(1) (a)-(d) and Order 18 Rule 18 (2) of the High Court Rules, 1988;
 - The Defendant had denied each and every allegation in the Plaintiff's Statement of Claim;
 - The Defence Counsel is uncertain about the Plaintiff's reliance on Order 25 of the High Court Rules, 1988 for its application to strike out the Defence;
 - The Defendant stated that it has complied with Order 18, Rule 12 and 13 of the High Court Rules, 1988;
 - That each and every allegation of the fact in the claim has been specifically traversed individually;
 - In terms of Order 18 Rule 12(2) a traverse may be either by denial or by a statement of non- admission. The Defendant's Defence has exactly done this; and
 - It is now for the Plaintiff to prove its allegations at the trial.
12. I have thoroughly perused the Statement of Claim, Statement of Defence, written submissions and oral arguments and have applied the appropriate provisions of the law to the facts of this case.
13. I find that the Defendant has done what he was required to do in terms of his right and entitlement to file his Statement of Defence in terms of the provisions of the law as cited hereinabove.
14. However, if the Defendant chose to file his Statement of Defence in the manner he did so herein stating that "*Save and except as hereinbefore expressly admitted, the Defendant denies each and every allegation of fact in the Counterclaim as if the same were set out seriatim in this document and specifically traversed,*" then it is on the Plaintiff to decide as to how she wishes to proceed with this matter henceforth.
15. Taking into consideration all above, it is too early at this stage of the proceedings to make a decision summarily to dismiss the Defendant's Statement of Defence, when the Defendant now puts the Plaintiff to strict proof of her Statement of Claim at the trial of this action.
16. Prima facie, it is only in *plain and obvious cases that recourse would be had to the summary process under this rule and accordingly I make reference to the case authority asset out hereunder-*
- 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 Li 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"
17. For the aforesaid rational, I proceed to accordingly strike out and dismiss the Plaintiff's Summons seeking to strike out the Defendant's Statement of Defence.
18. The matter to take its normal cause in terms of the provisions of the *High Court Rules, 1988*.
19. Since the Defence has brought to this court's attention that the Plaintiff was appraised of these submissions earlier through correspondence to reconsider its application, however, failed to do so and decided to proceed with the current application seeking to strike out the Statement of Defence.
- It is appropriate that I impose a summarily assessed cost in the circumstances of \$650 against the Plaintiff to be paid to the Defendant within 14 days timeframe hereof.
20. In **Conclusion** , I make the following orders accordingly-

FINAL ORDERS

- (i) That the Plaintiff's Summons seeking to Striking Out of the Defendant's Statement of Defence fails.
- (ii) The Plaintiff's Statement of Claim and the Defendant's Statement of Defence remains intact.

- (iii) The Plaintiff to pay to the Defendant summarily assessed costs of \$650 within 14 days.
- (iv) Matter to take its normal cause and adjourned to 08th August, 2018 @ 9am for further directions.
- (v) Orders accordingly.

Dated at Suva this 30th day of July, 2018



Master
MR VISHWA DATT SHARMA

cc: *Prena Preetika Lawyers, Suva*
Haniff Tuitoga, Suva