

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION**

**CIVIL ACTION NO.: HBC 187 of 2018**

**BETWEEN : YARANDI INVESTMENTS PTY LIMITED;  
JADARU PTY LIMITED AND SFE INVESTMENTS  
PTY LIMITED**  
**PLAINTIFFS**

**AND : THE PERSONAL REPRESENTATIVES OF THE  
ESTATE OF CHRISTOPHER JAMES DONLON**  
**FIRST DEFENDANT**

**: FIJI DEVELOPMENT BANK**  
**SECOND DEFENDANT**

**: PACIFIC TIMBER DEVELOPMENT LIMITED in  
liquidation represented by the OFFICIAL RECEIVER  
OF FIJI**  
**THIRD DEFENDANT**

---

**APPEARANCES/REPRESENTATION**

**PLAINTIFF** : Ms. M. Fong [Jamnadas & Associates]  
**1<sup>st</sup> DEFENDANT** : No Appearance Entered and Not Represented  
**2<sup>nd</sup> DEFENDANT** : Ms. Erasito [Lajendra Lawyers]  
**3<sup>rd</sup> DEFENDANT** : Ms. P.Singh [Attorney-General's Chambers]  
**RULING BY** : Acting Master Ms Vandhana Lal  
**DELIVERED ON** : 17 February 2023

---

**INTERLOCUTORY RULING**

---

1. This is the Plaintiffs' application dated 03 December 2019 seeking leave to amend its statement of claim. The said application is made pursuant to Order 20 Rule 5 of the High Court Rules and is supported by an affidavit of John Learmonth.
2. The said application is opposed by the Second Defendant who had on 24 December 2019 filed its affidavit in opposition.
3. An affidavit in reply was filed on 06 August 2020.
4. According to the Plaintiffs, a writ of summons and statement of claim was filed around 20 June 2018 whereby the Plaintiffs are trying to recover monies and assets mortgaged to them by the First and Third Defendants and represented through a deed signed by the relevant parties on 08 May 1995.

Upon withdrawing instruction from their previous solicitors, Plaintiffs engaged services of the current solicitors. Upon a review of the claim, it was discovered that amendments were needed to better reflect the full facts of the Plaintiff's claim.

Whilst sorting through old folders, further documents were discovered and passed to the current solicitors.

It was realised that additional information as found in the documents had to be pleaded.

Amendments sought are:

- i. Current references to parties so that there is consistency and no chance of confusion within the same;
- ii. Further and better particulars with regards to securing of assets against the First and Third Defendants.
- iii. Corrected particulars with regards to the First Defendant's alleged appointment as Receiver and Manager over Third Defendant;

- iv. Factual correction with regards to entity to which Second Defendant loaned monies subsequent to which the contested mortgage was registered on certain titles.

The said amendment is said to be made within a year of filing the amended writ of summons and with notice to the Defendants.

In his affidavit in reply the deponent has annexed a Deed of Appointment of Receiver and Manager as well as a conformation of authority by SFE Investments Pty Ltd.

5. The Second Defendant's contention is that John Learmonth does not hold any authority to swear affidavits on behalf of the Plaintiffs, Annexure marked JL 1 to the affidavit is unclear.
6. The solicitor for the Second Defendant submits that the instances where claim can be amended under Order 20 rule 5 of the High Court Rules are to alter the capacity in which a party sues and to add or substitute a new cause of action.

The Plaintiff's application does not propose to further amend the amended claim as provided for under Order 20 Rule 5.

In the amended statement of claim (filed on 06 December 2018) paragraphs 14,15,16 and 17 identifies the real issue between the Plaintiffs and the Second Defendant whilst in the proposed second amended claim the contents of the said paragraphs are not amended except for the renumbering of the said paragraphs.

As such there is no further clarity for the purpose of determining the real question on controversy.

The solicitor also raised issue regarding the affidavits not been in compliance with Order 41 Rule 9 (2) of the Rules which requires;

*“Every affidavit must be indorsed with a note showing on whose behalf it is filed and the dates of swearing and filing, and an affidavit which is not so indorsed may not be filed or used without the leave of the Court.”*

The solicitor relied on the case of **Prasad v Prasad a Suva High Court Civil Action No. HBC 48 of 2014** (delivered on 02 December 2015) where the court highlighted various case law which addressed the issue of requirement to comply with Order 41 Rule 9(2) of the High Court Rules.

7. As required by Order 41 Rule 9(2) of the High Court Rules, there is no indorsement by Plaintiffs on the affidavit in support filed on 13 December 2019 or on the affidavit in reply.
8. However, the Second Defendant chose to respond to the affidavit in support instead of objecting to the use of the Plaintiffs’ affidavit in support.
9. Whilst making submission solicitor for Plaintiffs sought leave to use the affidavit.
10. Hence, I will grant Plaintiffs leave to use the said affidavits.
11. This is a common issue which this court is required to deal with more frequently.
12. Order 41 Rule 9(2) clearly states that the affidavit without indorsement *“may not be filed or used without leave of the court”*.
13. I find if the Registry whilst accepting the affidavits for filing are more vigilant, they can ensure affidavits that are not in compliance with Order 41, rule 9 is not filed without leave of the court. This will ensure affidavits are in compliance with the rules and time is not wasted in parties making application/submission at later stage and for Court to make its determination.

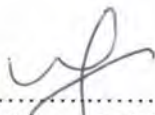
14. Hence, I direct the Senior Court Officer to notify the clerks to ensure affidavits filed henceforth are in compliance with Order 41 Rule 9 of the High Court Rules.
15. Order 20 Rule 5(1) of the High Court Rules allows a party “*to amend his/her pleading*” with leave of the Court.
16. According to the Plaintiffs the purpose of further amendment is outlined in paragraph 12 of the affidavit in support and has been outlined earlier in this ruling (last paragraph of page 2).
17. Upon perusal of paragraphs 2 and 7 in the amended statement of claim and paragraphs 2 and 7 of the proposed second amended statement of claim, I note there is no amendment being made.
18. Paragraph 9 has been amended.
19. Paragraph 11 of the proposed second amended statement of claim is also amended to state that the First Defendant made certain representation concerning appointment of Christopher James Donlon.
20. Paragraph 14 of the proposed second amended statement of claim is an amended to paragraph 13 of the amended statement of claim.
21. I do not find the amendment will cause prejudice the Defendants. However, for the delay being caused can be compensated with costs.
22. Hence, I am allowing the amendments.

**Order**

23. The Plaintiffs are granted leave to further amend its amended statement of claim filed 06 December 2018.

24. The Plaintiffs are to file and serve their second amended statement of claim as per format in the annexure to the affidavit. They are to do so within 14 days from to-date.
25. The Plaintiffs to pay Second Defendant cost for this application assessed at \$500 and to be paid within 14 days from to-date.



  
Vandhana Lal [Ms]  
Acting Master  
At Suva.

17 February 2023

**TO:**

1. **Suva High Court Civil File No. HBC 187 of 2018;**
2. **Jamnadas & Associates, Solicitors for the Plaintiff;**
3. **The Personal Representative of the Estate of Christopher James Donlon, the First named Defendant;**
4. **Lajendra Lawyers, Solicitors for the Second Defendant;**
5. **Attorney-General's Chambers, Solicitors for the Third Defendant.**