

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 237 of 2021

BETWEEN: **BIRONDA FIJI LIMITED T/A TRUE BLUE HOTEL** a limited liability company
incorporated under the laws of Fiji.

PLAINTIFF

AND: **SHANIL NAIDU** father's name Chinmunsami Naidu formerly of Koala Way, Horsely
Park, New South Wales 2175, Australia, Businessman/ Managing Director currently
residing at Heven Hotel Nawai Nadi.

SECOND PLAINTIFF

AND: **SIGATOKA CLUB** a club duly registered under the Registration of Club Act.

FIRST DEFENDANT

AND: **WILL TIROILAU** a registered Bailiff with registration number 06/2017 of Sigatoka.

SECOND DEFENDANT

Appearances: Mr. Patel K. for the Plaintiffs
Ms. Krishma K. and Ms. Devi V. for the Defendants
Date of Hearing: 06 July 2023
Date of Ruling: 07 July 2023

R U L I N G

1. Before me is a Summons for Leave to Amend the Amended Statement of Claim. The Summons was filed on 05 April 2023. It is supported by an affidavit of Shanil Naidu sworn on 03 April 2023. This application was filed following my Ruling dated 08 February 2023.
2. The proposed amended statement of claim, according to the Plaintiff, seeks to add to the pending action, a new relief which is material to the facts alleged in the existing claim.
3. The Defendant opposes the application. The Defendant argues that the proposed amended adds a new cause of action which is caught under the Limitations Act.
4. I have considered the submissions filed by both parties.
5. I agree with the Plaintiff's submission. In my view the Defendant's argument is misguided. On a claim based on breach of contract, time runs from the date when of an alleged breach. To be more precise, time runs from the date of knowledge of the alleged breach. In this case as the Defendant's Counsel conceded at the hearing, the Defendants alleged breach occurred in 2022 when the Defendant

issued a tenancy agreement to a third party and thereby terminating the tenancy agreement with the Plaintiff. Knowledge of this happened during an interlocutory hearing in Court in 2022. Since there is a new tenant on the premises in question, who is a bona fide purchaser for value without notice of the then alleged existing tenancy agreement between the Plaintiff and the Defendant, specific performance is no longer an appropriate remedy for the Plaintiff.

6. All that the Plaintiff seeks in the proposed amended statement of claim is to plead damages in lieu of specific performance. I see no problem with this. I see no reason to award costs to the Defendant and parties to bear their own costs.

ORDERS

1. Leave granted to the Plaintiff to file and serve Amended Statement of Claim to Amended Statement of Claim within seven (7) days.
2. Fourteen (14) days thereafter to the Defendant to file Amended Statement of Defence to Amended Statement of Claim.
3. Seven (7) days thereafter to the Plaintiff to file and serve Amended Reply to Amended Statement of Defence.
4. Parties to bear their own costs.
5. Adjourned to 18 August 2023 for mention.



Anare Tuilevuka

JUDGE

Lautoka

07 July 2023