

IN THE HIGH COURT OF FIJI
AT SUVA
CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No. HBC 204 of 21

BETWEEN: **PACIFIC ENERGY (SOUTH WEST PACIFIC)**
PTE LTD

PLAINTIFF/APPLICANT

AND: **AKSHAY AMAN CHAUDHARY RANJAN**
RAHUL CHAUDHARY AND SHAMILA DEVI as
Executors and trustees of the Estate of Ramendra Prasad
of Lot 3 Princess Road, Sawani, Nausori.

FIRST DEFENDANTS/RESPONDENT

AND: **FARMERS FISH AND CHIPS HOLDINGS PTE**
LIMITED of Lot 3 Princess Road, Sawani, Naitasiri.

SECOND DEFENDANTS/RESPONDENT

AND: **MOBIL OIL AUSTRALIA PTY LIMITED t/a**
MOBIL OIL (FIJI) of Level 6, ANZ House, 25
Victoria Parade, Suva, Fiji.

THIRD DEFENDANTS/RESPONDENT

Date of Hearing : 30 October 2024
For the Applicant : Mr Chang. K
For the 1st Respondent: Mr Pal. A
For the 3rd Respondent: Mr Singh
Date of Decision : 22 January 2024
Before : Levaci, SLTTW Acting Puisne Judge

RULING

(APPLICATION FOR CONSOLIDATION OF CASES PENDING TRIAL)

PART A - BACKGROUND

1. By Notice of Motion, the Plaintiff/Applicant makes this application to consolidate two pending proceedings initiated both by Writ on the same facts seeking the same reliefs.
2. The initial claim commenced by Writ of Summons with an indorsement of claim was filed and registered as HBC 193/21. It did not contain any form of Statement of Claim. Thereafter, another Writ of Summons was later filed registered as HBC 204/21 together with a Statement of Claim on the same reliefs as the previous registered claim.
3. The current application seeks for a consolidation of both the applications.

PART B: AFFIDAVITS

4. In their Affidavit, The Applicant deposes as follows –

HBC 193/21

‘3. On 22 September 2021, the Plaintiff filed a Writ of Summons and Indorsement of Claim in 193/21 (Action 1) against the First Defendants, Second Defendants and Third Defendants.

4. In Action 1, the Plaintiff claims orders for specific performance against the First Defendants compelling the First Defendants to comply and carry out their obligations to the Plaintiff under the Supply Agreement dated 31 January 2017 (Supply Agreement) and various interlocutory orders, including an interim injunction.

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5. On 6 October 2021, the Plaintiff filed a Writ of Summons and Statement of Claim for 204/21 (Action 2) against the First Defendants, Second Defendants and Third Defendant.

6. In Action 2, the Plaintiff seeks, in addition to the same claims in Action 1, a declaration that the Plaintiffs Supply Agreement remains on foot and is valid

and binding against the First defendants and in the event the Court denies the Plaintiffs claim for a declaration and specific performance, a claim against the First Defendants for liquidated damages in sum of FJ\$1,620,550.19 and Interest of 15% per annum up to the date of judgment.

7. The Plaintiff also claims damages against the Second and Third Defendant for tortious interference with the Plaintiffs contractual right and pre and post judgement interest pursuant to the Law Reform (Miscellaneous Provisions) – Death and Interests (Amendment) Act 2011.

Application for Consolidation

8. I am advised by the Plaintiff’s counsel that the cause of separation of Action 1 and Action 2 are the result of their clerical error which led to the statement of claim for Action 1, being incorrectly filed using a separate Writ form. This gave rise to Action 2.

9. The intention of the Plaintiff at all times was to make one claim against the Defendants.

10. As a result the Plaintiffs claim in Action 1 and Action 2 against the Defendant all arise from the same set of facts/matters.

11. To confirm that, as far as the Plaintiff is concerned, the claims it makes in Action 1 and Action 2 are the same (with additional claims in Action 2) and all parties to both Action 1 and Action 2 are represented by the same legal counsel.

12. I am also advised by Counsel and believe that the continuation of both Action 1 and Action 2 separately will give rise to confusion and unnecessary duplication creating unnecessary expense.

13. I also believe that at trial, it would be a waste of court resources and time to try these two matters separately.”

PART C: SUBMISSIONS

5. In their oral submissions, Counsel for Applicant seeks to rely on Order 4 rule 2 of the high Court rules arguing that there are common questions on the same facts and same witnesses relied upon on both files. Relied upon Dean -v- Jan HBC 133/2018 where the Court issued costs as a result of wastage of court resources.
6. Counsel for the third Respondent argued that there was no statement of claim filed for HBC 193/21 and was in breach of Order 18 rule 1 of the High Court Rules. The Affidavit in support of the application acknowledges a clerical error. There is an abuse of court process.

7. Counsel for the First and Second Respondent concurred with the submissions by the 3rd Respondent and argued that there are multiple instances of non-compliance. The relief for injunction is sort and should be in compliance with Order 32 rule 1 of the High Court Rules. The Applicant should have sort enlargement of time to amend the error. The delay has caused unnecessary costs and waste of resources. Respondents had withdrawn their application for striking out.

PART D: LAW ON CONSOLIDATION OF PROCEEDINGS

8. The Applicant has relied upon Order 4 (1) of the High Court Rules which provides-

“1. Where two or more causes or matters are pending, then, if it appears to the Court-

- (a) That some common question of law or fact arises in both or all of them, or
- (b) That the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions, or
- (c) That for some other reason it is desirable to make an order under this rule, the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any of them.

9. In the Supreme Court Practice 1988 (Vol 1, Sweet and Maxwell, London,1987) para 4/9/1 in pg 27 held that –

‘There is a discretion to consolidate pending actions, that is to say actions in which the Writ has been served (The Hendersen (1882) 7. P.D 57) and in which the judgment has not yet been obtained and satisfied.

The main purpose of consolidation is to save cost and time and therefore it will not usually be ordered unless there is “some common question of law or fact bearing sufficient important in proportion to the rest” of the subject matter of the actions “to render it desirable that the whole should be disposed at the same time (Payne –v- British Time Recorder Co [1921] 2 K.B 1, p16 ; Harwood –v- British Statesman Publishing Ltd [1929] W, N 38; Daws –v- Daily Sketch [1960] 1 All E.R 397 C.A). Where there is the case, actions may be consolidated where the plaintiffs are the same and the defendants are the same or where the plaintiffs or defendants are all the same.”

PART D: ANALYSIS

10. The effect of the rule is that a wide discretion rests with the Court in determining whether or not to grant the application. The conditions for which the court will determine an application for consolidation falls within the following:
 - (i) There must be two or more matters;
 - (ii) A common question of law and fact arising from the matter or the rights or relief claimed are in respect of or arise from the same transaction.
 - (iii) That the Court may order for the matters to be consolidated, or may order the matters be tried at the same time or one after another or order that any of them to be stayed pending the determination of any one of the actions’.
11. There are limitations to these rules. They include where there are a significant number of lawyers instructed in the cases involved, consolidation may be difficult.
12. The basis of the application is seeking consolidation of the two proceedings. Both are from the same facts and reliefs are the same. Both parties are the same and represented by the same counsel. This contradicts the requirement for consolidation based on common or similar question of law and facts.
13. The claim is for a breach of supply agreement by the Defendants for the provision of fuel distribution services from Sawani.
14. In the initial Writ, 193/21, the Plaintiff seeks solely for Specific Performance of the Agreement.
15. In the second Writ, 204/21, the Plaintiff is now claiming for specific performance of the Agreement, Declaration that the Agreement is valid and binding and seeks for injunctive reliefs against the Defendants from removing or dismantling equipment and machines installed by the Plaintiff to assist the Defendant in the distribution of fuel services. In the alternative, the Plaintiff seeks for liquidated damages owing from the Supply Agreement.
16. Counsel for the Defendants have both objected to the application on the basis that this is a breach of Order 18 Rule 1 of the High Court Rules requiring a Statement of Claim to be filed with a Writ. No Statement of Claim has been filed for HBC 193/21 and the Plaintiff has admitted was a clerical error. These are defects cannot be cured by consolidation.
17. When considering the conditions for granting consolidation, the facts are the same for both files. The reliefs are the same, with additional reliefs sort by the Plaintiffs in HBC 204/21. The Counsels remain the same for both matters.

18. However, the reason behind the consolidation is to correct a clerical error.
19. Order 6 rule 2 of the High Court Rules requires in Rule 2 in sub-rule (1) (b) of the High Court Rules, requires a statement of the amounts claimed in respect of the debt or demand and statement for further proceedings to be stayed with in a time limit for appearances, provided the defendant pays the amounts claimed.
20. In the 1988 Supreme Court Book Vol 1 (Sweet and Maxwell, London) page 35 in para 6/2/2 states :

“The indorsement in such a case was formerly called a ‘general indorsement’. The indorsement should be a concise statement of the nature of the claim made or the relief or remedy required. Where the claim arises out of a contract, the indorsement should state the date of the contract and between whom it is made, and the nature of the claim and the relief or remedy arising thereunder...Where the indorsement of claim lacks particularity the defect should not render the writ a nullity (Putin -v- Wood [1962] 1 QB 594. The defect may be cured by amendment or by the service of a Statement of claim. (Hill -v- Borough of Laton [1951] 2 KB 387; see also Marshall -v- LPTB [1936] 3 ALL ER 83, CA; Batting -v- LPTB [1941] 1 ALL ER 228 CA; Grimsell -v- Cathell [1952] 2 QB 671; or by the defendants delay, especially where he is at all times aware of the nature of the action which the writ was intended to initiate (Putin -v- Wood); but the indorsement of the nature of the claim may be sufficient without amendment of the writ to justify a claim pleaded on a later statement of claim, as in Geoff Bros Estates Ltd -v- Primerose Brook Joint Sewerage Board [1953] 2 QB 318. If the indorsement of the writ is defective e.g. simply claiming “500 pounds damages and for loss of earnings” without specifying a cause of action, the Court has power to amend it after the expiry of the current period of limitation at least where the defendant knew all along what the claim for damaged was for (Sterman -v- E.W & J. Moore [1970] 1 QB 596 [1970] 1 All ER, 581, C.A.

21. From what is stated, there is a cure to amend or to serve a Statement of Claim against the Defendants in order to specify the cause of action, where the Defendant is aware of the claim. A statement of claim together with a writ, according to the Supreme Court Book 1988 (Sweet and Maxwell, London) Page 35 para 6/2/3 provides:

“The indorsement on the writ must be full and proper statement of claim with proper particulars to be given. There is, however a practice, which allows a statement of claim, provided it does properly plead a cause of action, to be somewhat attenuated form. But all the essentials must be set out. The cause of action e.g. goods sold and delivered’ must be stated, the dates may be given in outline e.g. 1983, 1 January to May 1, the particulars may be given by reference to “full particulars which have been delivered and exceed 3 folios” but if it is essential and those particulars should have

been in writing and be identified e.g. by giving the numbers and dates of invoices. This practice is limited to simple cases.”

22. In the case of Narayan -v- Jameson [2010] FJHC 328; Civil Action 210.2001 (4 June 2010) Fenando J held the following:

“23) AS the plaintiff appears to find fault with the court officer this court called for and referred the record in case number 473/1999 to see whether the Notice of Appointment for Hearing of Originating Summons (annexed as RN3 to the affidavit of plaintiff) had been filed as alleged in that case, and found that such a Notice has been filed (but not with the alteration as in as RN3) **However there were some other matters too that came to light:**

1. There was no alteration of the number of the case from 473 to 310 on the caption of the Motion filed in case number 473/1999, though it appears in RN3! Therefore the alteration of RN3 may have taken place after filing and issuing!
 2. On further perusing the record in 473/1999 this court found that the Originating Summons in the case and this case (310/2001) are word for word almost the same in the reliefs they pray as well as the facts they plead! The parties and captions are the same as well! The affidavits supporting the summons are almost word for word the same. Except the date month and year on which the two matters have been filed, both cases are on the same cause of action filed over 21 months apart. That it’s duplicity of actions and as such is an abuse of court process.”
23. Similarly in this case, both the Writs are the same in terms of the Claims and Writ sort. They are a duplicity of each other and hence an abuse of court processes.
24. In this instance I find that the underlying objective of consolidation by the Plaintiffs defeats the purpose for which the true intention of consolidation arises. Although the outcome is the same, there are existing Rules in existence to cure the defect acknowledged by the Plaintiff. The application for consolidation is an abuse of process.
25. The Court finds that the application for consolidation cannot be granted.
26. To retain the existence of both files to run simultaneously without proper applications for amendments or withdrawal of one of the claims will further render the Plaintiff to an abuse of court process.


Orders of the Court:

27. The Court orders as follows:

(a) That the Application for Consolidation be dismissed;

(b) That costs against the Applicant for a sum of \$500.




Mrs Senileba LWTT Levaci
Acting Puisne Judge