IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 362 of 2023

BETWEEN	**:**	**ISIRELI TUIFUA FA Trading as FA & COMPANY** ***Plaintiff***
AND	**:**	**SHAILENDRA GOPAL RAJU** ***First Defendant***
AND	**:**	**ROSY REDDY as Administratrix of ESTATE OF NARAYAN REDDY** ***Second Defendant***
AND	**:**	**SHERANI & CO** ***Third Defendant***
AND	**:**	**REDDY GROUP, YANKTESH PERMAL REDDY, KALPANA REDDY, REDDY CONSTRUCTION COMPANY LTD, REDDY ENTERPRISES LTD, CLYDE EQUIPMENT PACIFIC LTD, REDDY HOLDINGS LTD, and FINE DRAND LTD** ***Fourth Defendant***
AND	**:**	**ROHIT REDDY** ***Fifth Defendant***
AND	**:**	**DEVANESH SHARMA** ***Sixth Defendant***
AND	**:**	**PRAMESH SHARMA** **Seventh Defendant**

Counsel	**:**	Mr I Fa (Junior) for the Plaintiff
		Mr K Nagin for the 1st, 2nd & 3rd Defendants
		Mr D Sharma for the 4th, 5th, 6th & 7th Defendants
Hearing	**:**	**26 February 2025**
Judgment	**:**	**21 March 2025**

JUDGMENT

(Summons to strike out claim against Fourth to Seventh Defendants)

[1] The Fourth, Fifth, Sixth and Seventh defendants ('**the Fourth to Seventh Defendants**') have applied to strike out the claim against them on the basis that the dispute in this proceeding is between the Plaintiff and the other defendants and their inclusion is an abuse of process.

[2] The Plaintiff resists the application contending that the Fourth to Seventh Defendants were party (along with the First, Second and Third Defendants) to a conspiracy to defraud it of its full legal fees.

Background[1]

[3] The dispute has its origins in previous proceedings commenced in the Suva High Court in 2011, namely, *Rosy Reddy v Yanktesh Reddy & 6 Ors*; Civil Action No 13 of 2011 ('**the 2011 proceeding**'). The Second Defendant instructed the Plaintiff to represent her in the 2011 proceedings.

[1] The background is almost entirely taken from the Plaintiff's pleadings and affidavits filed for the Plaintiff in this proceeding.

[4] The Plaintiff and the Second Defendant signed a Legal Services Fee Agreement ('**the Retainer Agreement'**) in December 2017 setting out the terms of the engagement in respect to the Plaintiff's representation of the Second Defendant not only in respect to the 2011 proceeding but also 2012 and 2014 proceedings involving the Second Defendant. The scope of the Plaintiff's services was expressed in the Retainer Agreement as taking the 2011 proceeding '*to a determination by the High Court and/or to a settlement'*.[2] The obligations of both parties were set out along with the Plaintiff's hourly rates.

[5] Clause 6.1 of the Retainer Agreement provided that the Second Defendant agree to pay '*a fixed fee of 10% of any judgment sum or settlement sum payable to the Plaintiff*' for its services in respect to the 2011 proceeding '*or in accordance with its hourly rates set out'* in the agreement '*whichever is higher'* plus VAT. The Second Defendant authorized the Plaintiff to deduct its legal fees from monies received by the Plaintiff.

[6] Clause 8.1 permitted the Second Defendant to discharge the Plaintiff '*at any time*.' If this occurred, the Second Defendant was liable for '*all unpaid charges'*. Where the matter is yet to be concluded '*the Firm's fees payable at the time of conclusion shall be calculated in accordance with the Firm's current hourly rates'* set out in the Retainer Agreement.

[7] In mid to late 2023, efforts were made by the parties (through their solicitors) to try to resolve the 2011 proceeding. It appears that on 30 November 2023, the Second Defendant reached out to, and had a meeting with, the Seventh Defendant to try to resolve the 2011 proceeding - it appears that the Seventh Defendant attended in his capacity as Chairperson of Reddy Enterprises Ltd.[3] The meeting led to an agreement that the case be settled for $11,000,000.[4]

[2] Clause 3.1.
[3] Para 8 of Seventh Defendant's Statement of Defence.
[4] Para 12. i. of Seventh Defendant's Statement of Defence and 12. i. of Fourth and Fifth Defendants Statement of Defence.

[8] The Sixth Defendant wrote to the Plaintiff on 30 November 2023 to advise that their client was agreeable to settle the matter for $11,000,000. The letter was emailed to the Plaintiff at 3.32pm on 30 November 2023. The Plaintiff responded to the Sixth Defendant by email at 3.45pm the same day, advising '*We note that you have rejected our offer. We will now proceed with our application before the court on 8 December 2023*.' It appears that the Second Defendant learned of the Plaintiff's email, as she sent an email to the Plaintiff about an hour later (at 4.35pm) to advise:

> *I am aware an offer of $11m has been presented to you, which is below my expectations.*
>
> *However, considering the time we have spent in court since 2011, me and my some (sic) will accept the $11m settlement. I do not wish to spend more time with this matter in court.*
>
> *Please kindly proceed to execute the settlement.*

[9] In line with their client's instructions, the Plaintiff wrote to the Sixth Defendant, again on 30 November 2023, to confirm that the Second Defendant accepted the offer of $11,000,000. The Sixth Defendant replied the next morning, on 1 December, to advise that their client's solicitors in New Zealand would prepare a Deed of Settlement.

[10] Also on the morning of 1 December 2023 the solicitor-client relationship between the Plaintiff and the Second Defendant took a turn for the worse.[5] They had an email exchange regarding the settlement. The communications began at 7.18am with an email from the Second Defendant explaining that she wished to expedite payment from the settlement monies to all, including the Plaintiff's fees as per the Retainer Agreement (in

[5] Refer to affidavit of Isireli Fa filed on 5 December 2023.

order to avoid delay). The Second Defendant provided her understanding of the calculations payable to the Plaintiff as per the Retainer Agreement and sought the Plaintiff's response to her figures. The Plaintiff responded that once the settlement was finalized it would calculate the invoice payable. The Second Defendant was not happy with this approach and requested that the Plaintiff '*provide your final invoice swiftly after the deed of settlement is signed so there is no disagreement between us'*. The Plaintiff responded, that it was unable to provide such details due to '*2 hearings next week'* and in any event '*there is no reason for disagreement as the fee agreement is very clear on how the fees are calculated'*. These communications all occurred within an hour.

[11] There followed the following email from the Second Defendant an hour later advising:

> *You will be paid based on your final invoice provided the final amount fairly reflects the work you and overseas counsel have done for us.*
>
> *Because of the way you have responded and we do not know what your final invoice is, we have decided to instruct another law firm to complete the settlement for us.*
>
> *Please finalise your invoice whenever it is ready for our consideration.*
>
> *We reserve the right to seek itemized particulars of the total cost (if billed on hourly basis) should the total invoice exceed 10% of the settlement sum + 15% VAT which is $1.37m.*
>
> *I am sorry we have to take this step to protect ourselves*.

[12] The Plaintiff responded by email several minutes later that the Second Defendant was in breach of their agreement and that proceedings would be filed by the Plaintiff against the Second Defendant.

[13] On 4 December 2023, Sherani and Co (the Third Defendant in the present proceeding), filed a Notice of Change of Solicitors for the Second Defendant in the 2011 proceeding.

Present proceedings

[14] The present proceedings were filed a day later, on 5 December 2023, by way of a Writ of Summons. The claim is brought against the Second Defendant and her new solicitors (the Third Defendant). The claim is also brought against the defendants in the 2011 proceedings (the Fourth and Fifth Defendants), their agent[6] (the Seventh Defendant) and their solicitor (the Sixth Defendant) The Statement of Claim is lengthy, some 9 pages long. The Plaintiff claims that the first three defendants have acted in breach of the Retainer Agreement, that there has been a breach of contract and unlawful interference, deceptive and misleading conduct, unconscionable conduct and conspiracy to defraud by unlawful means by the defendants. In respect to the last allegation, the Plaintiff claims that there were secret negotiations between the defendants to defraud the Plaintiff of its legal fees.

[15] The Plaintiff seeks by way of relief:

1. *An order for specific performance of the Retainer Agreement between the Plaintiff and the 2nd Defendant of 27.12.17.*

2. *A declaration that the 1st, 2nd and 3rd Defendant has unlawfully interfered with the Plaintiff's retainer Agreement with his client dated 27.12.17 with the intent to cause loss and damage to the Plaintiff and his Client.*

[6] As Chairman of the Reddy Enterprises Ltd.

3. *A declaration that the 1st and 2nd defendant had engaged in Deceptive and Misleading Conduct contrary to section 75 of the Fijian Competition and Consumer Commission Act 2010 against the Plaintiff and his Client.*

4. *A declaration that the 1st and 2nd defendant had engaged in unconscionable conduct contrary to section 76 of the Fijian Competition and Consumer Commission Act 2010 against the Plaintiff and his client.*

5. ***A declaration that the 1st and 2nd defendant conspired to defraud by unlawful means together with the 2nd-5th defendants against the Plaintiff and his client**.*

6. *An injunction against the 1st, 2nd and 3rd defendants, their servants, agents, whomsoever and whatsoever, from interfering with the Plaintiffs Retainer Agreement with his client dated 27.12.17, in any manner or form.*

7. *General Damages against the 1st, 2nd and 3rd defendants.*

8. *Exemplary damages against the 1st, 2nd and 3rd defendants in the sum of $1,000,000.00 [One Million Dollars].*

9. ***An injunction against the 1st-7th defendants, their servants, or agents whomsoever and whatsoever from dealing with another law firm in Fiji or abroad or with any 3rd parties in any matters whatsoever that relates to the Plaintiffs Retainer Agreement with his client dated 27.12.17 and representation concerning the Plaintiff's client in Rosy Reddy v Yanktesh Permal Reddy & 6 Ors; Civil Action No HBC 133 of 2011**.*

10. *Costs of this action.*

11. Any other relief this Honorable Court deems just.[7]

[16] Along with the Writ of Summons, the Plaintiff filed an ex parte application for injunctive relief, seeking orders from the Court restraining the Second Defendant from instructing new solicitors to represent her in the 2011 proceedings, restraining the defendants from interfering with the Retainer Agreement, and restraining the defendants from settling the 2011 proceeding. That application came before me in December 2023, and I issued a ruling on 8 December 2023 dismissing the same.

[17] The defendants subsequently filed their defences – the Sixth Defendant filed his defence on 18 December 2023 while the Fourth, Fifth and Seventh Defendants filed their defences on 25 January 2024.[8] The Sixth Defendant denies any knowledge of any secret negotiations. The Fourth and Fifth Defendants accept that a meeting occurred on 30 November 2023 between the Second Defendant and their agent (the Seventh Defendant) after the Second Defendant had reached out to the Seventh Defendant to try to settle the 2011 proceeding. The meeting led to the case being settled for $11,000,000. The Seventh Defendant confirms the meeting which he attended in his capacity as Chairperson of Reddy Enterprises Limited.

[18] In the meantime, the Plaintiff filed an appeal with the Court of Appeal from my decision of 8 December 2023, and was successful. The Court of Appeal granted an interim injunction on 22 December 2023 restraining the defendants '*from interfering with the Retainer Agreement in any manner or form whatsoever'*. The Court of Appeal directed that the Plaintiff's application for injunctive relief be made inter-parties and served on the defendants with the intention of the application being heard by the Court of Appeal.

[7] My emphasis. These are the only two orders that pertain to the applicants in the present summons (ie the Fourth to Seventh Defendants).
[8] The Third Defendant filed its defence on 3 January 2024 while the First and Second Defendant's defence was filed on 12 February 2024.

[19] The inter-parties application was heard by the Court of Appeal on 16 February 2024. The Court of Appeal made the following orders the same day:

> 1. *That the Deed of Settlement between the 2nd and 4th Respondents be and is allowed to proceed;*
>
> 2. *That the 2nd Respondent, within 14 days after settlement, pay into Court the sum of $1.5 million, less the $119,000 held on behalf of the 2nd Respondent, in the Appellant's trust account, as security for fees payable to the Appellant under the 2017 Retainer Agreement.*
>
> 3. *That the Appellant's Bill of Costs to be provided to the 2nd Respondent.*
>
> 4. *That the 4th, 5th, 6th and 7th Respondents are hereby struck out as parties to these proceedings.*

[20] The proceedings in the Court of Appeal were adjourned to 21 March 2024 for further directions. On 19 June 2024, the amount of $1,381,000 was paid into Court by the Second Defendant, as directed by the Court of Appeal. The Plaintiff's Bill of Costs was supplied to the defendants on or about 17 October 2024. There has since arisen a dispute between the first three defendants and the Plaintiff over the figures in the Plaintiff's Bill of Costs – the first three defendants oppose any release of the monies from the Court in the meantime. A hearing date for this dispute is scheduled shortly in the Court of Appeal.

[21] In terms of the proceedings in the High Court, there has been little movement. The Plaintiff has not filed a Summons for Directions despite the defences being filed by all defendants by February 2024. On 23 August 2024, the Fourth to Seventh Defendants filed the present summons, along with a supporting affidavit from Shanil Padarath, the Group Financial Controller for the Fourth Defendant, seeking to strike out the claim against them. The Plaintiff filed an affidavit in opposition on 29 January 2025.

[22] For completeness, the Court was informed of the following by counsel at the hearing on 26 February 2025:

i. The 2011 proceeding has now been discontinued.

ii. The Fourth and Fifth Defendants have withheld $5,000,000 of the settlement monies from the Second Defendant until the present proceedings are resolved – in order to protect their position. This is in addition to the amount of $1,381,000 paid into court by the Second Defendant from the settlement monies as directed by the Court of Appeal.

iii. Counsel for the Plaintiff indicated that if the monies paid into court are released to the Plaintiff as per the amount in its Bill of Costs this will resolve the present proceeding.

Relevant legal principles

[23] The summons to strike out the Plaintiffs' claim against the Fourth to Seventh Defendants is made under O.18, r.18(1)(a) to (d) of the High Court Rules 1988.[9] The provision reads:

> *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-*

[9] As well as under O.15, r.6(2)(a).

(a)it discloses no reasonable cause of action or defence, as the case may be;

(b)it is scandalous, frivolous or vexatious;

(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.

[24] The principles applicable to a strike out application are well settled. In *National NBF Finance (Fiji) Limited v. Buli* [2000] FJCA 28, the Court of Appeal stated:

The law with regard to striking out pleadings is not in dispute. Apart from truly exceptional cases the ***approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be proved****. If a legal issue can be raised on the facts as pleaded then the courts will not strike out a pleading and will certainly not do so on a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of a factual contention. It follows that an application of this kind must be determined on the pleadings as they appear before the court...*[10]

[25] Seneviratne J offered the following helpful discussion of the authorities in *South Pacific Metals Ltd v Silikiwai* [2021] FJHC 386 (15 December 2021) at [5]:

In ***Carl Zeiss Stiftung v Rayner & Keeler Ltd*** *(No 3) [1970] Ch 506 it was held that the power given to strike out any pleading or any Part of a pleading under*

[10] My emphasis.

this rule is not mandatory but permissive, and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending plea.

In ***Drummond-Jackson v British Medical Association*** *[1970] 1 W.L.R. 688; [1970] 1 All ER 1094 it was held;*

> *Over a long period of years it has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases.*

In the case of ***Walters v Sunday Pictorial Newspapers Limited*** *[1961] 2 All ER 761 it was held:*

> *It is well established that the drastic remedy of striking out a pleading or, part of a pleading, cannot be resorted to unless it is quite clear that the pleading objected to, discloses no arguable case. Indeed, it has been conceded before us that the Rule is applicable only in plain and obvious cases.*

In ***Narawa v Native Land Trust Board*** *[2003] FJHC 302; HBC0232d.1995s (11 July 2003) the court made the flowing observations:*

> *In the context of this case I find the following statement of Megarry V.C. in Gleeson v J. Wippell & Co. [1971] 1 W.L.R. 510 at 518 apt:*

> *"First, there is the well-settled requirement that* ***the jurisdiction to strike out*** *an endorsement or pleading, whether under the rules or under the inherent jurisdiction,* ***should be exercised with great caution, and only in plain and obvious cases that are clear beyond doubt****. Second, Zeiss No. 3 [1970] Ch. 506 established that, as had previously been assumed, the jurisdiction under the rules is discretionary; even if the matter is or may be res judicata, it may be better not to strike out the pleadings but to leave the matter to be resolved at the trial."*[11]

[26] Pathik J provided the decision in *Narawa v Native Land Trust Board*.[12] His Lordship further stated at page 4:

> *In considering this application I have also borne in mind the following passage from* ***Halsbury's Laws of England 4th Ed Vol. 37*** *para. 434 on '****abuse of process****' which I consider pertinent:*
>
> > *"****An abuse of the process of the court arises where its process is used, not in good faith and for proper purposes****, but as a means of vexation or oppression or for ulterior purposes, or, more simply, where the process is misused. In such a case, even if the pleading or indorsement does not offend any of the other specified grounds for striking out, the facts may show that it constitutes an abuse of the process of the court, and on this ground the court may be justified in striking out the whole pleading or indorsement or any offending part of it .* ***Even where a party strictly complies with the literal terms of***

[11] My emphasis.
[12] [2003] FJHC 302 (11 July 2003).

> ***the rules of court, yet if he acts with an ulterior motive to the prejudice of the opposite party, he may be guilty of abuse of process****, and where subsequent events render what was originally a maintainable action one which becomes inevitably doomed to failure, the action may be dismissed as an abuse of the process of the court."*[13]

[27] The Court's power to strike out a claim must be sparingly used and only in clear and obvious cases. A party ought not to be denied access to the courts unless the cause of action is so untenable that they cannot succeed. Even where a case appears weak, such that it is unlikely to succeed, this does not suffice to warrant striking out. It is, however, an abuse of the process of the court for a party to bring a case otherwise than in good faith or for proper purposes. A claim may be struck out for disclosing no reasonable cause of action. The facts must be taken as pleaded in the Statement of Claim unless admissions to the contrary by a plaintiff is deposed. An interlocutory application is not the time to resolve factual disputes.

Decision

[28] The Fourth to Seventh Defendants argue that the claim against them should be struck out or they should be removed as parties as there is no real cause of action against them. Further the relief sought against them is redundant in light of the Court of Appeals orders of 16 February 2024.

[29] The Plaintiff disagrees. It relies on its pleading of an alleged conspiracy between the defendants to defraud it by unlawful means, and thus deny the Plaintiff its legal fees.

[13] My emphasis.

[30] Dealing briefly with the claim against the Sixth and Seventh Defendants. I am satisfied that the claim against them should be struck out as the Plaintiff does not seek any relief against either of these defendants. The only relief sought in the Statement of Claim pertaining to the Fourth to Seventh Defendants are orders 5 and 9. Order 5 is not sought against the Sixth and Seventh Defendants. Order 9, being the injunction, is sought against all the defendants but the Court of Appeal has dissolved the injunction and struck out the proceedings against the Fourth to Seventh Defendants. In light of the developments with this proceeding in the Court of Appeal, including permitting the Deed of Settlement to be implemented, there is no basis for the Plaintiff to still seek the injunctive relief at order 9.

[31] Turning to the Fourth and Fifth Defendants. The Plaintiff seeks a declaration, at order 5, against the Fourth and Fifth Defendants (and the First, Second and Third Defendants) that they all conspired to defraud the Plaintiff of its legal fees by unlawful means. The Plaintiff's pleading on this cause of action is found at paragraphs 33 and 34 of the Statement of Claim. The Plaintiff pleads that the First and Second Defendants entered into '*secret negotiations'* with the Fourth to Seventh Defendants to settle the Second Defendant's claim '*in order to deprive the Plaintiff of his legal entitlements under his Retainer Agreement with the Second Defendant*'. The particulars of the '*conspiracy to defraud by unlawful means*' are the secret negotiations, an unlawful termination of the retainer agreement by email, a refusal to remunerate the Plaintiff in accordance with the Retainer Agreement, a refusal to allow the Plaintiff to receive the settlement monies to be paid into the Plaintiff's Trust Account as per the Retainer Agreement, and unlawfully appointing the Third Defendant as the Second Defendant's new solicitors.

[32] The allegation by the Plaintiff here is that the first five defendants engaged in a **fraudulent** conspiracy to deprive the Plaintiff of its legal fees. As the Supreme Court noted in *Kuar v Singh* [2022] FJSC 19 (29 April 2022):

[51] Observations made in the speeches of the House of Lords on the subject of ***fraud*** *in* Bradford Third Equitable Benefit Building Society v. Borders *[1941] 2 All E.R. 205 make for an important starting point. At p216H Lord Russell of Killowen said:*

> *"**To make a charge of fraud is a serious thing, and before people make it, they should be clear as to the grounds and facts upon which they rely and the basis of their charge**."*

[52] Lord Wright at p218G cautioned:

> *"**The importance of the established rule that fraud must be precisely alleged and strictly proved**."*

In the instant case neither of these requirements were met. They fell well below the standard required.

[53] In the Bradford case the Plaintiff had been unable to connect the representative of the building society with a certain meeting and with other communication in which the contractors had made misleading statements, orally and in a brochure, claiming the society had given its support to their company. The Plaintiff failed before the High Court, succeeded in the Court of Appeal, and failed again before the House of Lords.

[54] Viscount Maugham set out at p211A the requirements of proof:

> *"My Lords, we are dealing here with a common law action of deceit, which requires four things to be established. First, there must be a representation of fact made by words, or, it may be, by conduct. The phrase will include a case where the defendant has manifestly approved and adopted a representation made by some third person. On the other hand, mere silence, however morally wrong, will not support an action of deceit: Peek v. Gurney (2), at p.390 per Lord Chelmsford, and at p.403, per Lord Cairns, and Arkwright v. Newbold (3), at p.318. Secondly, the representation must be made with a knowledge that it is false. It must be wilfully false, or at least made in the absence of any genuine belief that it is true: Derry v. Peek (4) and Nocton v. Ashburton (Lord) (5). Thirdly, it must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which will include the plaintiff, in the manner which resulted in damage to him: Peek v. Gurney (2) and Smith v. Chadwick (6), at p.201. If, however, fraud be established, it is immaterial that there was no intention to cheat or injure the person to whom the false statement was made: Derry v. Peek (4), at p.374, and Peek v. Gurney (2), at p. 409. Fourthly, it must be proved that the plaintiff has acted upon the false statement and has sustained damage by so doing: Clarke v. Dickson (7). I am not of course, attempting to make a complete statement of the law of deceit, but only to state the main facts which a plaintiff must establish."*[14]

[33] The allegation of fraud against the defendants is serious and require proper particulars. The Plaintiff's pleading must state precisely the fraud that is alleged against the five defendants. I am satisfied that the particulars at paragraph 33 of the Statement of Claim

[14] My emphasis.

fall well short of the necessary detail. The five particulars at paragraph 33 either fail to disclose a fraud or are simply untenable. For example:

i. Secret negotiation between the parties is not of itself a fact demonstrating fraud. Parties to litigation are not precluded from having their own negotiations and discussions to try to settle litigation. There is no obligation on parties to inform their lawyers of discussions between the parties. No doubt it is more cost effective for litigants to do so rather than their lawyers. It is natural for parties to do so where they are family as was the case with the 2011 proceeding. The Plaintiff fails to provide details as to how the secret negotiations here were fraudulent.

ii. The suggestion that the Second Defendant was not permitted to terminate the Plaintiff's instructions is nonsense. Even the Retainer Agreement permitted the Second Defendant to do so '*at any time'*.[15]

iii. The particulars at paragraph 33 do not disclose when the defendants allegedly refused to remunerate the Plaintiff its legal fees.

iv. As for allegedly refusing to allow the Plaintiff to receive the settlement monies in its Trust Account, the Retainer Agreement does not convey any such right to the Plaintiff, only that where monies are received by the Plaintiff it is entitled to deduct its fees therefrom. How such a refusal of itself constitutes a fraudulent conspiracy is not clear - the Plaintiff is still entitled to its legal fees if the settlement monies are paid into another account.

v. There is nothing unlawful with the Second Defendant instructing new solicitors. It happens regularly in litigation throughout Fiji and overseas. The Second Defendant was perfectly entitled to do so at any stage of the litigation and, again, the Retainer Agreement did not preclude this.

[15] Clause 8.1 of the Retainer Agreement.

[34] For completion, I note that the Fourth to Seventh Defendants are also mentioned at paragraph 37 of the Plaintiff's Statement of Claim. The Plaintiff pleads that by the Third Defendant's unlawful act (the unlawful act allegedly being the filing of a notice of change of solicitors by the Third Defendant in the 2011 proceeding) this has caused the Plaintiff '*substantial loss and damage in facilitating Equitable Conversion of the Plaintiff's legal fees by the First. Second, Fourth, Fifth, Sixth and Seventh Defendants'*. This cause of action is brought against the Third Defendant only and not the Fourth to Seventh Defendants. Also, no relief is sought against the Fourth to Seventh Defendants arising from this allegation.

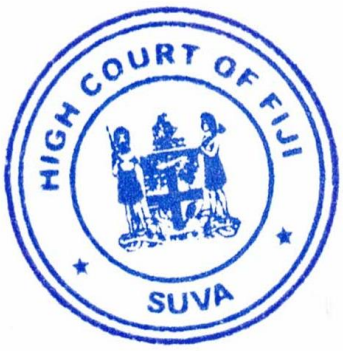
[35] I have given some consideration to whether the Plaintiff's pleadings against the Fourth to Seventh Defendants merely signify a weak case and should be permitted to continue in their current form. However, I am satisfied that on the serious allegation of fraudulent conspiracy the pleadings are untenable. The allegations against the Fourth to Seventh Defendants do not disclose how, if at all, the Fourth to Seventh Defendants intended to dishonestly thwart the Plaintiff of its legal fees owed by the Second Defendant. It is an abuse of process to have joined the Fourth to Seventh Defendants without properly specifying the details of the alleged fraudulent conduct. I am satisfied on the pleading contained in the Plaintiff's Statement of Claim that this is a clear and obvious case to strike out the claim against the Fourth to Seventh Defendants.

[36] Accordingly, my orders are as follows:

i. The Plaintiff's claim against the Fourth, Fifth, Sixth & Seventh Defendants is struck out.

ii. The Plaintiff is directed to file an Amended Statement of Claim within 21 days. The Amended Statement of Claim to remove the Fourth, Fifth, Sixth & Seventh Defendants as parties to the proceedings as well as the allegations against them, including removal of paragraphs 33 and 34 and amending 37. Orders 5 and 9 of the relief to be removed.

iii. The Fourth to Seventh Defendants are entitled to costs which I summarily assess in the amount of $2,500 to be paid by the Plaintiff within 21 days.



D. K. L. Tuiqereqere

JUDGE

Solicitors:

Fa & Company for the Plaintiff

Sherani & Co for the First, Second & Third Defendants

R Patel Lawyers for Fourth, Fifth, Sixth & Seventh Defendants