

B. ANALYSIS

2. The statement of claim contained only two paragraphs and the second paragraph only deals with the issue of interest of the claim leaving the particulars of the claim confined to just one paragraph which reads as follows

‘1. The Plaintiff’s claim is for the sum of NZD 85,471.30 being money **paid by the Plaintiff for the Defendants at the Defendants’ request.**

Particulars

The sum of NZD85,471.30 was paid by the Plaintiff to South Pacific Air Ambulance on 24 April, 2006 pursuant to a verbal request made by the Defendants on or about 24 April,2006. Payment was for the services of an Air Ambulance to transport the Second named Defendant from Suva, Fiji to Auckland, New Zealand for urgent medical treatment. The sum of NZD 85,471.30 was repayable to the Plaintiff on the Second named Defendant’s return to Fiji from New Zealand.’ (Emphasis added)

3. The statement of claim is brief and does not disclose material facts to establish a cause of action against the Defendants with clarity. Who made the request for the Air Ambulance is not clear, whether the both Defendants jointly made the request, as it seems from the statement of claim is not clear enough for the Defendants to plead specifically. It may be the claim is based on implied consent by the 2nd named Defendant through his wife, who is the 1st named Defendant, yet that needs to be pleaded with clarity.
4. The Defendants in their joint statement of defence deny that they agreed to pay the Plaintiff as alleged in the paragraph 1 of the statement of claim and further in the alternative pleaded that 2nd named Defendant’s medical condition

precluded him from being able to give any valid request for the South Pacific Air Ambulance or any valid agreement to pay for such services.

5. It is not clear as to who made the request for the Air Ambulance and the payment of the money by the Plaintiff for the said services. From the brief facts available in the pleadings it can be safely deduced that the 2nd named Defendant was seriously ill for such an emergency evacuation. I am unaware of the type of illness and whether he could have requested for an air ambulance as alleged in the statement of claim. In any event why the Plaintiff paid such an amount for the Air Ambulance needs an explanation and more specifically who made the request to whom and when the decision was taken needs to be explained in the statement of claim with clarity to constitute a cause of action against the defendants jointly and or severally.
6. It is safe to presume that the 2nd named Defendant was seriously ill and was not in a position to make a request from Air Ambulance, but this does not absolve him from the payment of the money reasonably incurred to the Plaintiff and those facts needs to be pleaded to ascertain the reasonableness of the actions of the Plaintiff. (See Re K [1988] Ch 310, Irvani v Irvani [2000] 1 Lloyd's Rep 412, Hart v O'Connor [1985] A.C 1000)
7. The 2nd named Defendant cannot deny the payment of money reasonably expended on him by the Plaintiff and why the 1st Defendant was joined to the action needs explanation in the statement of claim. It may be the request for Air Ambulance was made by the wife of the 2nd named Defendant, and that may be the reason for joining the 1st Defendant, but this needs to be pleaded with clarity, without being evasive on the vital facts.
8. The Plaintiff needs to plead the cause of action with sufficient clarity for the Defendants to know the case against them. If not that would lead to unnecessary delay and also to undue expenses and waste of time of the court.
9. Order 18 rule 6 of the High Court Rules of 1988, deals with requirements of Pleading and states

Facts, not evidence, to be pleaded

‘6(1) Subject to the provisions of this rule, and rules 9, 10, and 11, every pleading must contain, and contain only, a statement in a summary form of the **material facts on which the party pleading relies for his claim** or defences, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief **as the nature of the case admits.**’(emphasis added)

10. The drafting pleadings is an art and there are more than one possible way of drafting a claim, but the essential thing is that while it should be as brief as the nature of the case admits ,and it should be sufficient to disclose the cause of action with sufficient clarity. When there are more than one party, as the Defendants, the specific reference to each one of them is needed and cause of action against each should be pleaded with sufficient clarity. In this action the Plaintiff has not pleaded the material facts on which the plaintiff relies for his claim and there is no clear reference to 1st named Defendant and how she was joined to the claim.
11. In Supreme Court Practice (1988) at page 269 it was stated under the “Material facts, not evidence” 18/7/3 state as follows

‘Material facts, not evidence’- Every pleading must contain only a statement of the **material facts on which the party pleading relies, and not the evidence by which they are to be proved** (per Farwell L. J in N. W. Salt Co Ltd v Electrolytic Alkali C Ltd [1913] 3K.B. 422,425). **“The distinction is taken in the very rule itself between the facts on which the party relies, and the evidence to prove those facts** (per Brett L.J. in Philipps v Philipps (1878) 4 Q. B. D. 133). **All facts which tend to prove the fact in issue will be relevant at the trial, but they are**

not “material facts” for pleading purposes. “It is an elementary rule in pleading that, when a statement of facts is relied on, it is enough to allege it simply without setting the allegation” (per Lord Denman C.J. in Williams v Wilcox (1838) 8 A& E 314, p 331; and see Stuart v Gladstone (1879) 10 Ch. D. 644).....’ (emphasis is added)

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In Supreme Court Practice (1999) at page 314 under the heading ‘**Need for compliance**’ it was stated as follows

‘Need for compliance- These requirements should be strictly observed (per May L. J. in Lipkin Gorman v Karpnale Ltd [1989] 1 W.L.R 1340 at 1352). Pleadings play an essential part in civil actions, and their primary purpose is to define the issues and thereby to inform the parties in advance of the case which they have to meet, enabling them to take steps to deal within it, and such primary purpose remains and can still prove of vital importance, and therefore **it is bad law and bad practice to shrug off a criticism as a “mere pleading point”** (see per Lord Edmund Davis in Farrell v Secretary of state for Defence [1980] 1 W.L.R 172 at 180, [1980]1 All E.R. 166 at 173)’. (emphasis is added)

12. In **Farrell v Secretary of State (Viscount Dilhorns) [1980] 1 All E.R 166 at 173** Lord Edmund –Davies held

It has become fashionable in these days to attach decreasing importance to pleadings, and it is beyond doubt that there have been times when an insistence on complete compliance with their technicalities put justice at risk, and, indeed, may on occasion have led to its being

defeated. But **pleadings continue to play an essential part in civil actions**, and although there has been since the Civil Procedure Act 1833 a wide power to permit amendments, circumstances may arise when the grant of permission would work injustice or, at least, necessitate an adjournment which may prove particularly unfortunate in trials with a jury. **To shrug off a criticism as ‘a mere pleading point’ is therefore bad law and bad practice. The purpose is to define the issues and thereby to inform the parties in advance of the case they have to meet and so enable them to take step to deal with it.**(emphasis added)

C. CONCLUSION

13. The Plaintiff's statement of claim does not disclose a cause of action against the 1st named Defendant who is the wife of the 2nd named Defendant. It can be presumed from the available evidence that some person would have requested for an Air Ambulance for the husband of the 1st named Defendant and according to the statement of defence the 2nd named Defendant was seriously ill and the request may have been from the 1st named Defendant, but this needs to be pleaded specially with certain clarity. It is unlikely that the Plaintiff would part with such an amount of money unless there was some assurance of reimbursement. It is not possible to deny the payment of the Plaintiff for Air Ambulance and it is also not possible to reject the payment of money reasonably expended on the 2nd named Defendant irrespective of his ability to consent at that time. This will also depend on the subsequent conduct, but the important facts needs to be pleaded in the statement of claim. I will not allow the strike out since an amendment to the statement of claim could cure the defects. Considering the principle in Calderbank v Calderbank (1975) 2 All ER 333 I will award a cost of \$750 to the 1st named Defendant though I am dismissing this summons, since the Defendants incurred unnecessary costs

due to the defective statement of claim of the Plaintiff. The Plaintiff is granted 21 days to amend the statement of claim indicating a cause of action against the 1st named Defendant and if not the action against the 1st named Defendant is deemed struck off. The delay is regretted.

D. FINAL ORDERS

- a. The Plaintiff is granted 21 days to file and serve an amended statement of claim and if not the action against the 1st named Defendant is deemed struck off.
- b. The Plaintiff is ordered to pay a cost of this application summarily assessed at \$750, within 21 days.
- c. The summons dated 10th September, 2010 is struck off.
- d. The matter to take normal cause.

Dated at **Suva** this **3rd day** of **July, 2013**.

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Justice Deepthi Amaratunga
High Court, Suva