

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 218 of 2009

BETWEEN : **HUSSAN BANO** of Lot 35, Stage II, 8 Miles, Narere, Nasinu,
Businesswoman.

PLAINTIFF

AND : **MOHAMMED RASHID** of Wainiyaku, Taveuni, Driver.

FIRST DEFENDANT

AND : **CREDIT CORPORATION (FIJI) LIMITED** a body incorporated and
registered under the laws of Fiji and having its registered office at Credit
House, 10 Gorrie Street, Suva, Fiji Islands.

SECOND DEFENDANT

BEFORE : **Acting Master Thushara Rajasinghe**

COUNSEL : **Mr. Vinit Singh** for the Plaintiff
Mr. Naidu N. for the Defendants

Date of Hearing : **5th February, 2014**

Date of Ruling : **17th April, 2014**

RULING

A. INTRODUCTION

1. The Plaintiff filed this Summons pursuant to Order 18 rule 18 (1) and inherent jurisdiction of this court seeking following orders inter alia,

- i. That the Defendant's counterclaim be struck out and dismissed with cost on an indemnity basis to the Plaintiff,

ii. That the Plaintiff be granted leave to refer to the Affidavit in reply of Mohammed Rashid filed on 24th of January 2013 at the hearing of this application.

2. The Plaintiff further stated in the Summons that the ground of this application is that the Defendant's counterclaim discloses no reasonable cause of action against the Plaintiff. According to Order 18 rule 1 (2), no evidence shall be admissible on an application made on the ground of disclosing no reasonable cause of action. Accordingly, this Summons was set down for hearing on the 5th of February 2014, where the learned counsel for the Plaintiff and the Defendant made their oral arguments and submissions. The learned counsel for the Defendant tendered his written submission during cause of the hearing. Having considered the Summons, oral and written submissions of the counsel, I now proceed to pronounce my ruling as follows.

B. BACKGROUND,

3. The Plaintiff instituted this action against the 1st and 2nd Defendants by way of a writ of summons seeking following orders inter alia,

- i. An injunction restraining the 1st and 2nd Defendants whether by himself or by anyone else or any agent from selling or attempting to sell, deal in or dispose off the said vehicle,
- ii. A declaration that the said motor vehicle No DW 952 is the property of the Plaintiff,
- iii. An order that the transfer of the motor vehicle to the 1st Defendant be set aside on the grounds that it was obtained fraudulently or alternatively,
- iv. Redemption of the debt owed to the 2nd Defendant,
- v. Delivery of the said vehicle to the Plaintiff on redemption,
- vi. Judgment against the 1st Defendant for the sum of \$24,250 being the monies earned for usage of vehicle,
- vii. Interest accumulated under the aforesaid Bill of Sale until judgment day,

- viii. Parking fees at the sum of \$5.00 per day until judgment day,
 - ix. General damages,
 - x. Interest,
 - xi. Costs,
 - xii. Any other orders deemed just to this Honourable court,
4. The Plaintiff's claim is founded on her allegation that the 1st Defendant falsely and intentionally misrepresented her that he will pay the debt owed by the Plaintiff to the 2nd Defendant and induced the Plaintiff to transfer the vehicle registration No DW 952. Having transferred it to his name, the 1st Defendant failed to pay the debt owed by the Plaintiff to the 2nd Defendant. Eventually the vehicle was repossessed by the 2nd Defendant.
 5. The Plaintiff subsequently withdrew his claim against the 2nd Defendant. The first Defendant served his amended statement of claim and counterclaim on 29th of June 2011. The Defendant denies the allegation made by the Plaintiff in his statement of claim and stated that the vehicle was sold to the Defendant free of any encumbrances. In view of the statement of defence, the vehicle was actually sold by the Plaintiff as for the part consideration of the land he purchased from the Defendant's father. The Defendant stated that the Plaintiff paid \$48,740 into the account of his father and transferred this vehicle for \$10,000 as part of the consideration for that sale of the land. He further stated that the Plaintiff has not notified the Defendant about any money due and owed to the 2nd Defendant in respect of this vehicle. He categorically denies any arrangement that he agreed to pay the debt owed to the 2nd Defendant.
 6. Having answered the Statement of Claim, the Defendant claims against the Plaintiff that he is the registered owner of the vehicle No DW 952 which was transferred to him by the Plaintiff for a sum of \$10,000. He claims that the Plaintiff has not paid back the said amount as the vehicle is now in her custody. Wherefore the Defendant alleges that by virtue of the Plaintiff's actions, he suffered loss of usage of the vehicle and claims special and general damages from the Plaintiff as a counterclaim in this action.

C. **THE LAW**

7. The Law on the issue of striking out of pleading and indorsement has extensively applied and discussed in the Fiji Jurisdiction, thus making it a well settled area of procedural law. Order 18 rule 18 (1) (a) states that;

“the court at any stage of the proceedings order to be struck out or amend any pleading or the indorsement, on the ground that –

a. It discloses no reasonable cause of action or defence as the case may be,

And may order the action be stayed or dismissed or judgment to be entered accordingly, as the case may be.

8. Order 18 rule 18 (2) has provided the scope of the hearing of an application made under Order 18 r 18 (1) (a), where it states that; *“No evidence shall be admissible on an application under paragraph 1 (a).*

9. **Justice Byrne** held in *Timber Resource Management Limited v The Minister for Information, The Minister for Agriculture, Fisheries and Forests, The Attorney General of Fiji and others (HBC 0212 of 2000)* that

“Time and again the court have stated that the jurisdiction to strike out proceedings under Order 18 rule 18 should be very sparingly exercised and only in exceptional cases where legal questions of importance and difficulty are raised – per Marsack J.A. in Attorney General v Shiu Prasad Halka (1972) 18 FLR 210 at page 215

In Hubbuck & Sons Ltd v Wilkinson, Heywood & Clark Ltd (1899) 1 Q.B.86 at page 96 Lindley M.R. said “the ...Procedure is only appropriate to cases which are plain and obvious, so that any master or judge can say at once that the statement of claim as it stands is insufficient even if proved to entitle the plaintiff to what he asks. The use of the expression “reasonable cause of action” shows the summary procedure.... Is only intended to be had recourse to in plain and obvious cases”.

10. Strike out of the pleading before it reach to the hearing and shut the litigant's opportunity to have his claim heard in a proper trial must be exercised with great amount of caution. The court should not unjustly prevent a litigant to exercise his right to be heard his claim in proper trial. Meantime, the court should be mindful that the Defendant should not be unjustly compelled to defend him for a plain and obvious claim which destine to be failing and founded with no reasonable cause of action. Accordingly this procedure of strike out pursuant to order 18 r 18 (1) (a) is appropriate only for exceptional cases which plainly and obviously disclose no reasonable cause of action. If the facts as pleaded do raise legal questions or triable issues of fact on which the rights of the parties depend, the court should not strike out the pleadings.
11. I now turn my attention to the issue of "reasonable cause of action".
12. **Justice Jitoko** in "Prasad v Home Finance Company Ltd [2003] FJHC 322; HBC0116D.2002S (23 January 2003)" has discussed the issue of reasonable cause of action where his lordship held that

"what constitutes a reasonable cause of action or defence does not mean that the Court should delve into whether the claim or defence is likely to succeed. As Lord Pearson stated in Drummond Jackson v. British Medical Association [1970] 1 WLR 688, [1970] 1 ALL ER 1094 CA at P.1101: No exact paraphrase can be given, but I think a reasonable cause of action means a cause of action with some chance of success, when (as required by r.19 (2)) only the allegations in the pleading are considered....."

The Courts view and many decisions on this matter is clear: As long as the statement of claim or the particulars (Davey v. Bentinck: (1893) 1 QB 185) disclose some cause of action, or raise some question fit to be decided by a Judge or a jury, the mere fact that the case is weak, and not likely to succeed is no ground for striking it out. (Supreme Court Practice 1985 Vol. 1 p.306)....."

It is therefore very clear that in both the exercise of its powers under O.18 r.18 and under

its inherent jurisdiction, a Court may only strike out a Statement of Claim and dismiss the action if in the words of Lord Blackburn, in Metropolitan Bank v. Pooley (1885) 10 App. (As 210 at p.221, if and when required by the very essence of justice to be done”.

13. In view of **Prasad v Home Finance Ltd** (supra), the test of reasonable cause of action does not require the court to determine whether the cause of action pleaded in the pleadings will eventually succeed. The only issue to be considered is that the facts pleaded in the pleadings disclose some cause of action or a dispute fit to be decided by the court.

D. ANALYSIS,

14. The Defendant's counterclaim is mainly founded on his allegation that he was falsely misrepresented by the Plaintiff that the vehicle has no encumbrances at the time of selling the vehicle to him. He was unaware of the existence of debt owed to the 2nd Defendant by the Plaintiff and legitimately acquired the registered ownership of the vehicle. However, the vehicle was repossessed by the 2nd Defendant due to the failure of repayment and eventually it is now in the custody of the Plaintiff. The Defendant claims special damages in the sum of \$10,000 and general damages from the Plaintiff.
15. The Defendant disputes the claim of the Plaintiff in his counterclaim. The facts pleaded in the counterclaim obviously do raise some issues to be determined whether the Plaintiff misrepresented the Defendant about the existence of the debt owed to the 2nd Defendant and such misrepresentation has caused such damages as pleaded in the counterclaim.
16. In my conclusion, I am satisfied that the facts pleaded in the counterclaim constitute some triable issues on which the rights of the parties depend. Wherefore, I hold that the counterclaim of the Defendant disclose a reasonable cause of action which needs to be determined by the court in a proper hearing before a judge. I accordingly make following orders that ;

- i. The Plaintiff Summons to strike out the counterclaim of the Defendant made under Order 18 rule 18 (1) (a) of the High Court Rules is refused and dismissed,
- ii. The Defendant is awarded a cost of \$1,000 assessed summarily,

Dated at Suva this 17th day of April, 2014.



A handwritten signature in blue ink, appearing to read "R.D.R. Thushara Rajasinghe".

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R.D.R. Thushara Rajasinghe
Acting Master of High Court, Suva