

**IN THE HIGH COURT OF FIJI AT SUVA**

**CIVIL JURISDICTION**

**Civil Action No. HBC 534 of 2006**

**BETWEEN**

**VIJAY SHARMA** of 2<sup>nd</sup> Floor, Prouds Building, Renwick Road, Suva, Fiji, Architect.

**FIRST PLAINTIFF/APELLANT**

**AND**

**SHARMA DESIGN GROUP LIMITED**, A duly incorporated company located at  
14 Denison Road, Suva.

**SECOND PLAINTIFF/APELLANT**

**AND**

**MARK HALABE** of 5 Deovji Street, off Princess Road, Tamavua, Suva, Fiji,  
Businessman.

**FIRST DEFENDANT/RESPONDENT**

**AND**

SUN (FIJI) NEWS LIMITED A limited liability company having its registered office in Lot 1 Wailekutu Subdivision Lami, Fiji.

**SECOND DEFENDANT/RESPONDENT**

**AND**

RUSSEL DOUGLAS HUNTER of Suva, Acting Publisher and Editor in Chief of  
SUN (FIJI) NEWS LIMITED

**THIRD DEFENDANT/RESPONDENT**

**Counsel** : Mr. T Tuitoga and Mr. V. Filipe for the Plaintiff.  
Mr. J. Savou for the 1<sup>st</sup> Defendant.  
Mr. E. Narayan for the 2<sup>nd</sup> & 3<sup>rd</sup> Defendants.

**Date of Hearing** : 26<sup>th</sup> October, 2016.

**Date of Judgment** : 17<sup>th</sup> November, 2016.

**JUDGMENT**

- [1] The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs/appellants preferred this appeal with the leave of the court first had and obtained against the order of the learned Master of the High Court striking out their claim against the 1<sup>st</sup> defendant.
- [2] The 1<sup>st</sup> defendant on 19<sup>th</sup> August 2010 filed a motion seeking to strike out the amended statement of claim filed on 08<sup>th</sup> October 2010. After hearing the parties the learned High Court Judge on 25<sup>th</sup> June 2013 made the following orders;

- a. The notice of Motion dated 27<sup>th</sup> November 2008 is struck off.
- b. The Plaintiff is ordered to pay a cost of \$ 500 to the 1<sup>st</sup> Defendant as costs for this application within 21 days from today.
- c. **The Plaintiff is directed to file summons to further amend the amended statement of claim to include the cause of action (including how 2<sup>nd</sup> Plaintiff is affected by the statement) against the 1<sup>st</sup> Defendant within 21 days from today and if not the claim against the 1<sup>st</sup> Defendant will be struck off. (Emphasis is mine).**
- d. Normal Cause.

[3] In compliance of the order “c” above the plaintiffs filed amended statement of claim on 17<sup>th</sup> July, 2013. The 1<sup>st</sup> defendant opposed the summons and the amended statement claim and on 17<sup>th</sup> October 2014 the plaintiffs withdrew the summons. The learned Master then struck out the claim against the 1<sup>st</sup> defendant on 04<sup>th</sup> November, 2014. The order of striking out the summons is to the following effect;

- a. Since the plaintiffs have withdrawn the summons to amend Statement of Claim dated 16<sup>th</sup> July, 2013 and filed on 17<sup>th</sup> July, 2013 and pursuant to the order of Justice Amaratunga of 25 June 2013 (and corrected on 5 July 2013), the claim against the 1<sup>st</sup> defendant is now deemed to be struck out.
- b. The plaintiffs are given two weeks to take necessary steps.
- c. Mention on 18<sup>th</sup> November 2014 at 9.00 A.M.

[4] The only question here for determination is whether the plaintiffs have failed and / or neglected to comply with the order of Justice Amaratunga made on 25<sup>th</sup> June, 2013.

[5] In compliance of the order the plaintiffs filed summons to further amend the amended statement of claim within 21 days from the said order.

[6] It is not a fact in dispute that the plaintiff filed summons and later withdrew it.

[7] The learned counsel for the 1<sup>st</sup> defendant submitted that the withdrawal of the summons by the plaintiff left the learned Master with no option but to comply with the order of Justice Amaratunga and to strike out the claim.

[8] I do not think that there is merit in this submission of the learned counsel. The court only ordered the plaintiffs to file summons to further amend the amended statement of claim. There is no order that it should be the last amendment or the plaintiff cannot withdraw it once it is filed.

[9] Once the summons is filed the order of the court is complied with and the order becomes redundant. Later withdrawal of the same summons does amount to non-compliance or violation of the same order.

[10] Accordingly, I make the following orders:

- (1) The appeal of the appellants is allowed.
- (2) The order of the learned master dated 04<sup>th</sup> November 2014 striking out the claim against the 1<sup>st</sup> respondent dated 16<sup>th</sup> July, 2013 is set aside.
- (3) The respondents shall pay the appellants \$2000.00 (\$1000.00 for each appellant) as costs of this appeal within 14 days from today.

  
Lyone Seneviratne

JUDGE



17<sup>th</sup> November, 2016