IN THE HIGH COURT OF FIJI AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 41 of 2013

BETWEEN : **RAINGOLD INVESTMENTS LIMITED** a limited liability company having its registered office at 72 Vunavou Street, Nadi.

PLAINTIFF

A N D : **COURTS (FIJI) LIMITED** a limited liability company having its registered office at 123 Ratu Mara Road, Samabula, Suva.

DEFENDANT

A N D : **CARPENTERS FIJI LIMITED** a limited liability company having its registered office at Suva.

THIRD PARTY

Appearances

Ms Varasikete for Plaintiff
Mr V Singh for Defendant
Mr E Narayan for Third Party

Date of Hearing : 18.4.2016
Date of Ruling : 18.4.2016

RULING

1. This is an application filed by the plaintiff for adjournment of the hearing set down for today (18.4.2016) and tomorrow. The plaintiff's new solicitor has sworn an affidavit in support of the application.

2. On 9 October 2015 the matter was listed for two days hearing in the presence of all parties including the plaintiff's former solicitors, Messrs Janend Sharma Lawyers.

3. On 21 March 2016 the court granted leave to cease acting as Barristers and Solicitors for the plaintiff in this action.

4. Ms Varasikete, counsel for the plaintiff submits that on 12 April 2016 her principal (Babu Singh & Associates) received instructions from Mr. Rajesh Patel via email to act for the plaintiff as the previous solicitor was granted leave to withdraw as counsel. She also submits that her principal was never instructed of the status of the proceedings nor was any document or pleading sent to her principal. She sought to vacate the hearing in the circumstances.

5. Mr Singh, Counsel for the defendant opposing the application submits that, *we are ready to proceed with the trial. We are not consenting to this application. There is no affidavit sworn by the plaintiff. The affidavit has been sworn by the plaintiff's solicitors without authority.* He then concludes that the action should be struck out with costs to be assessed on solicitor/client basis.

6. Mr Narayan, counsel for the third party while endorsing the submission made by Mr Singh sought the action be struck out with costs.

7. There has been no affidavit filed by the plaintiff to support the application. The affidavit has been sworn by the plaintiff's new solicitor without authority. The plaintiff is a company only duly authorised persons could swear affidavit on behalf of the company. As the supporting affidavit has been sworn by its solicitors without authority, I disregard the same.

8. The reasons given by the plaintiff are insufficient to adjourn the hearings. The plaintiff's new solicitors should have obtained full and complete instructions before filing their notice of appointment. A solicitor is not entitled to say that he was never instructed of the status of the case after filing the notice of appointment. The hearing cannot be adjourned as a matter of course.

9. Additionally, it is a belated application. The other parties vigorously oppose the application.

10. I would therefore refuse to adjourn the hearing and ask the plaintiff to proceed with the hearing.

11. Counsel for the plaintiff replies that she cannot offer any evidence. As the result of it, the case has become non-suited. I therefore struck out and dismiss the action with summarily assessed costs of $2250 payable by the plaintiff to the 3rd party and with costs, which is to be assessed (in default of agreement), to the defendant.

12. Mr Singh seeks costs on solicitor-client indemnity basis. Indemnity costs usually ordered when the court finds abuse of process. In this case, I do not see any abuse of process on the part of the plaintiff. I would order the defendant is entitled to costs to be assessed, if not agreed.

Final outcome

1) Plaintiff's action is struck out and dismissed.

2) Plaintiff will pay summarily assessed costs of $2,250.00 to the third party.

3) Plaintiff will also pay costs, which is to be assessed (in default of agreement) to the defendant.

18/4/16

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M H Mohamed Ajmeer
JUDGE

HIGH COURT OF FIJI
LAUTOKA

At Lautoka
18th April 2016