

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA, FIJI ISLANDS

CIVIL CASE NO.: HBC 81 OF 2004

BETWEEN : **SHIU RAM** of Votualevu, Nadi

PLAINTIFF

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

DEFENDANT

Appearances:

Mr Roopesh Singh for the Plaintiff
Mr K. Naidu for the Defendant

RULING

Background

1. On the last trial date of this action the hearing was vacated on the Plaintiff's application and the following Orders were made by Court:
 - (i) Costs of \$4000.00 to be paid by the Plaintiff to the Defendant.
 - (ii) Hearing dates of 4th and 5th September, 2015 is vacated.
 - (iii) Matter to be called for Mention on 31st October, 2014 for Plaintiff to make his application to amend pleadings and the Defendant to make application to strike out the Plaintiff's claim.
 - (iv) The application to strike out Plaintiff's claim is to be dealt with first.

2. Accordingly Plaintiff made an application to amend his pleadings and

the Defendant an application to strike out the claim.

3. On the hearing date of the said applications, Counsel made oral submissions on both applications and tendered written submission too.
4. Upon hearing the Counsel for both parties as aforesaid, I pronounced the Judgment dated 1st October, 2015 dismissing the application of the Defendant to strike out the claim. However, I made no Order in regard to the application to amend the pleadings of the Plaintiff and this ruling will be in regard to the said application.

Determination

5. The Plaintiff's application to amend the Statement of Claim dated 2nd December, 2014 states that it is made pursuant to Order 20 Rule 5(3) of the High Court Rules and the inherent jurisdiction of this Court.
6. Order 20 Rule 5(3) of the High Court Rules allows parties to apply for correction of a party's name. The amendment application seeks an amendment of the content of the Statement of Claim and not for correction of a party's name.
7. The Defence Counsel argues in his submissions that the application fails to lay the legal foundation for the relief/prayer sought and therefore its misconceived and flawed as the provisions of Order 20 Rule 5(3) do not have any relevance to the application before the Court.
8. In reply to the said argument the Plaintiff's Counsel submitted to Court that the application to amend pleadings is made pursuant to Order 20 Rule 5(1) and not Rule 5(3). He said that due to a typographical error the applicable Rule is wrongly typed as Rule 5(3). He states further that Order 2 Rule 2 of the High Court rules comes into rescue and this error is an irregularity which could be cured. He also states that the Defendant was well aware of what is to be amended but did not raise any objection till the date of hearing.
9. Considering the submissions made as above, I am of the view that stating Order 20 Rule 5(3) as the relevant Rule in the amendment application is a typographical error and therefore the application is not misconceived and flawed. It is clear from the copy of the Amended Statement of Claim annexed as Exhibit 1 to the application to amend

that the amendment is not in regard to the names of the parties. Therefore the Defendant is aware of the intended amendment although the Interlocutory Notice of Motion to amend the Statement of Claim states that the application is made pursuant to Order 20 Rule 5(3) of the High Court Rules.


10. Due to the reasons set out as above I hold that the said irregularity could be cured under the provisions of Order 2 Rule 1 of the High Court Rules. As such I hold that the application to amend is not flawed.
11. As I have dealt with the other issues in regard to the amendment of pleadings by my Order dated 1st October, 2015 I will not reiterate the findings and the reasons given in the said Order in allowing the Application to amend.

Conclusion

I make the following Orders accordingly:

- (a) Leave is granted to the Plaintiff to amend his Statement of Claim.
- (b) The costs of this application be costs in the cause.




Lal S. Abeygunaratne
Judge

At Lautoka
10th February, 2016