

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 04 of 2016

BETWEEN : ANANDRA SINGH aka ANENDRA SINGH of 405 Manford Street, Milpitas CA
95035, USA, Contractor.

PLAINTIFF

AND : VIRENDRA SINGH aka VIRENDRA SINGH ARJUN of Brisbane, Australia,
Retired.

DEFENDANT

BEFORE: Master Vishwa Datt Sharma

COUNSELS: Mr. Jiten Reddy - for the Plaintiff
Mr. O'Driscoll - for the Defendant

Date of Ruling: 21st June, 2017

RULING

*[Motion filed by the Defendant seeking an order to strike out the Plaintiff's
Writ of Summons filed beyond the limitation period and
costs pursuant to Section 8 (1) of the Limitation Act]*

APPLICATION

1. This is the Defendant's Notice of Motion seeking for the following orders:
 - (a) That this matter be struck out as having been filed beyond the period limited to recover for proceeds of Sale of Land actions; and
 - (b) That a further Order for the costs of this action be paid by the Plaintiff to the Defendant on a full indemnity basis upon the grounds as set forth in the accompanying affidavit of Virendra Singh.
2. The Plaintiff did not file any affidavit Response to the Defendant's application.

THE LAW

3. Section 8 (1) of the Limitation Act [Cap 35] provides as follows-

8 (1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on property, or to recover proceeds of the sale of land, after the expiration of twenty years from the date when the right to receive the money accrued.

ISSUES FOR DETERMINATION

4. Whether the Court should accept the Plaintiff's late oral application made to the Court to withdraw the Plaintiff's case with no costs or that the Plaintiff's substantive Writ action be Struck Out with costs on the Defendant's application?

ANALYSIS and DETERMINATION

5. The Plaintiff commenced the substantive proceedings by a Writ of Summons dated the 12th January 2016 which was issued on the 13th January 2016.
6. The Defendant filed a Statement of Defence dated and filed on the 31st March 2016.
7. The Plaintiff responded accordingly with a Reply of Defence dated the 28th June 2016 and filed on the 8th July 2016. No further action was taken by the Plaintiff hereafter.
8. The Defendant filed the Notice of Motion together with a supporting Affidavit on 15th September, 2016, seeking orders to strike out the Plaintiff's action with costs.

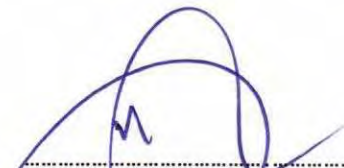
9. *On 20th October, 2016, the Counsel representing the Plaintiff informed Court that the Plaintiff has taken away his file from his office and that he wished to withdraw as Counsel representing the Plaintiff.*
10. The Court directed the Counsel to file and serve his withdrawal application on the Plaintiff and the Defendant accordingly.
11. No application to withdraw as Counsel was filed by the Plaintiff's Counsel.
12. Upon the Defence Counsel's application, the **Notice of Motion** was heard and written submissions furnished to the Court. The application was adjourned for delivery of a Ruling.
13. Both Counsels were summoned by the Court to appear in Court on 14th June, 2017 in order to ascertain the status of the representation by the Counsel for the Plaintiff.
14. Plaintiff's Counsel, Mr. Reddy informed court that he was making an application to '**Struck Out**' the Plaintiff's case since the Client (Plaintiff) said rather '**rather than withdrawing as Counsel for the Plaintiff, withdraw the whole case with no costs**'.
15. Counsel representing the Defendant sought for costs since the application seeking an order for striking out was heard and the written submissions filed in Court.
16. It is noted that the Plaintiff's Counsel failed to file any application to withdraw as Counsel representing the Plaintiff rather left it unattended until this Court directed that he should appear and explain his status. He had no other alternative but make an oral application to withdraw the Plaintiff's case.
17. For the aforesaid rational, I will not deliberate on the Defendant's Motion on merits seeking the order for the **striking out** of the Plaintiff's action rather allow the **withdrawal** of the Plaintiff's case with **reasonable costs** to the Defendant.
18. Accordingly, I make the following orders-
 - (i) **That the Plaintiff's Writ of Summons filed herein is hereby withdrawn and Dismissed; and**

- (ii) That the Plaintiff is ordered to pay the Defendant summarily assessed costs of \$350 within 14 days' time frame.
- (iii) Orders accordingly.

Dated at Suva this 21st day of June, 2017



cc: Jiten Reddy Lawyers, Suva
O'Driscoll & Co., Suva.



MR VISHWA DATT SHARMA
Master of High Court, Suva