

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 331 of 2011

**BETWEEN :** **SHALENDRA SINGH** of Galoa Queens Road, Serua, Businessman.

PLAINTIFF

**AND :** **PACIFIC BEACH INVESTMENTS LIMITED** a company registered in Fiji having its registered address at BDO Zarin Ali, Level 8, Dominion House, Suva.

FIRST DEFENDANT

**AND :** **JOSEPHINE KIRON SINGH** Lot 106, Manulevu Road, Nadera, Nasinu as the Sole Executrix and Trustee of Yajbal Singh aka Janen Singh.

SECOND DEFENDANT

**BEFORE:** **Master Vishwa Datt Sharma**

**COUNSELS:** **Mr. Pranish Kumar** for the Plaintiff  
**Ms. Prem Narayan** for the 1<sup>st</sup> Defendant

**Date of Ruling:** **25<sup>th</sup> July, 2017**

**RULING**

*[Summons by the 1<sup>st</sup> Defendant seeking an order to strike out the Plaintiff's Amended Statement of Claim pursuant to Order 18 Rule 18 (1) (a) (b) (d) of the High Court Rules, 1988 and the Inherent Jurisdiction of the High Court]*

**APPLICATION**

1. This is the First Defendant's Summons to Strike Out the Amended Statement of Claim against the First Defendant:

**On the Grounds:**

- (i) That it discloses no reasonable cause of action or defence, or
  - (ii) That it is Scandalous, frivolous or vexatious; and
  - (iii) That it is otherwise an abuse of the process of the Court.
2. The application is made pursuant to *Order 18 Rule 18 (1) (a), (b), and (d) of the High Court Rules 1988* and under *the inherent jurisdiction of the High Court*.
  3. There is no Affidavit in Support filed to the 1<sup>st</sup> Defendant's application.
  4. The Plaintiff opposed the 1<sup>st</sup> Defendant's Striking out application and relied on the Affidavit to Show Cause filed on 23<sup>rd</sup> February, 2016.
  5. The application was heard in terms of the affidavit evidence filed coupled with the written and oral submissions made in this proceedings by the 1<sup>st</sup> Defendant.

**BACKGROUND**

6. The Plaintiff's Substantive Claim is for the losses and damages suffered by the Plaintiff through the actions of the 1<sup>st</sup> Defendant and the Deceased Yajbal Singh and therefore claims the following reliefs from the 2<sup>nd</sup> Defendant to whom all the Estate of the deceased now vests to as being the Personal Representative of the deceased:-
  - Special Damages in the sum of \$87,500;
  - General Damages to be assessed;
  - Interest of 13%; and
  - Costs of this action.
7. According to the First Defendant, the Plaintiff dealt with the deceased Yajbal Singh. He did not have any contractual dealings with the First Defendant. The First Defendant as a third party may have benefitted but was not party to any contractual dealings or arrangements. There is no form of claim either in tort or in contract against the First Defendant. There can be no general damages as no particulars of any form of loss has been pleaded against the First Defendant.



### The LAW and PRACTICE

8. The law on striking out pleadings and endorsements is stipulated at *Order 18 Rule 18 of the High Court Rules 1988* which states as follows-

*18.-(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-*

- (a) it discloses no reasonable cause of action or defence, as the case may be; or*
- (b) it is scandalous, frivolous or vexatious; or*
- (c) it may prejudice, embarrass or delay the fair trial of the action; or*
- (d) it is otherwise an abuse of the process of the court;*

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

*(2) No evidence shall be admissible on an application under paragraph (1) (a).*

9. In Paulo Malo Radrodro vs Sione Hatu Tiakia & Others, HBS 204 of 2005, the Court stated that:

*"The principles applicable to applications of this type have been considered by the Court on many occasions. Those principles include:*

- (a) A reasonable cause of action means a cause of action with some chance of success when only the allegations and pleadings are considered - Lord Pearson in Drummond Jackson v British Medical Association [1970] WLR 688.*
- b. Frivolous and vexation is said to mean cases which are obviously frivolous or vexations or obviously unsustainable - Lindley Li in Attorney General of Duchy of Lancaster v L.N.W Ry [1892] 3 Ch 274 at 277.*
- c. It is only in plain and obvious cases that recourse would be had to the summary process under this rule - Lindley MR in Hubbuck v Wilkinson [1899] Q.B. 86.*
- d. The purpose of the Courts jurisdiction to strike out pleading is twofold. Firstly is to protect its own processes and scarce resources from being abused by hopeless cases. Second and equally importantly, it is to ensure that it is a matter of justice; defendants are permitted to defend the*



*claim fairly and not subjected to the expense inconvenience in defending an unclear or hopeless case.*

- e. *"The first object of pleadings is to define and clarify with position the issues and questions which are in dispute between the parties and for determination by the Court. Fair and proper notice of the case an opponent is required to meet must be properly stated in the pleadings so that the opposing parties can bring evidence on the issues disclosed - ESSO Petroleum Company Limited v Southport Corporation [1956] A.C at 238" - James M Ah Koy v Native Land Trust Board & Others - Civil Action No. HBC 0546 of 2004.*
- f. *A dismissal of proceedings "often be required by the very essence of justice to be done"..... - Lord Blackburn in Metropolitan - Pooley [1885] 10 OPP Case 210 at 221- so as to prevent parties being harassed and put to expense by frivolous, vexations or hopeless allegation - Lorton LJ in Riches v Director of Public Prosecutions (1973) 1 WLR 1019 at 1027"*

10. His Lordship Mr Justice Kirby in Len Lindon -v- The Commonwealth of Australia (No. 2) S. 96/005 summarised the applicable principles as follows:-

- a. *It is a serious matter to deprive a person of access to the courts of law for it is there that the rule of law is upheld, including against Government and other powerful interests. This is why relief, whether under O 26 r 18 or in the inherent jurisdiction of the court, is rarely and sparingly provided.*
- b. *To secure such relief, the party seeking it must show that it is clear, on the face of the opponent's documents, that the opponent lacks a reasonable cause of action ... or is advancing a claim that is clearly frivolous or vexatious...*
- c. *An opinion of the Court that a case appears weak and such that is unlikely to succeed is not, alone, sufficient to warrant summary termination... even a weak case is entitled to the time of a court. Experience teaches that the concentration of attention, elaborated evidence and arguments and extended time for reflection will sometimes turn an apparently unpromising cause into a successful judgment.*
- d. *Summary relief of the kind provided for by O.26 r 18, for absence of a reasonable cause of action, is not a substitute for proceeding by way of demurrer.... If there is a serious legal question to be determined, it should ordinarily be determined at a trial for the proof of facts may sometimes assist the judicial mind to understand and apply the law that is invoked and to do in circumstances more conducive to deciding a real case involving actual litigants rather than one determined on imagined or assumed facts.*



- e. *If, notwithstanding the defects of pleadings, it appears that a party may have a reasonable cause of action which it has failed to put in proper form, a Court will ordinarily allow that party to reframe its pleading.*
- f. *The guiding principle is, as stated in O 26 r 18(2), doing what is just. If it is clear that proceedings within the concept of the pleading under scrutiny are doomed to fail, the Court should dismiss the action to protect the defendant from being further troubled, to save the plaintiff from further costs and disappointment and to relieve the Court of the burden of further wasted time which could be devoted to the determination of claims which have legal merit.*

#### Issues for Determination

11. Following are the issues which require determination by this honourable court:-
- (a) Whether the Plaintiff's Writ of Summons and the Statement of Claim discloses any reasonable cause of action?
  - (b) Whether the Plaintiff's Writ of Summons and the Statement of Claim is scandalous, frivolous or vexatious?
  - (c) Whether the Plaintiff's Writ of Summons and Statement of Claim is an abuse of the process of the Court?

#### ANALYSIS and DETERMINATION

##### Whether the Plaintiff's Writ of Summons and Statement of Claim discloses any reasonable cause of action?

12. The following notes to *Order 17 r19 of the Supreme Court Practice (UK) 1979 Vol. 1 or 18/19/11* on what is meant by the term 'a reasonable cause of action' sufficiently provides the answer to the applications.

*".....A reasonable cause of action means a cause with some chance of success when only the allegations in the pleadings are considered (per Lord Pearson in Drummond Jackson v British Medical Association [1970] 1 WLR, 688; [1970] 1 All ER 1094 CA). So 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 out (Moore v Lawson (1915) 31 TLR 418, CA.; Wenlock v Moloney [1965] 1 WLR 1238 1 W.L.R. 1238 [1965] 2 All ER 871, CA)...."*



13. Reference is also made to Lindley M.R. in *Hubbuck & Sons, Ltd v Wilkinson, Heywood & Clark Limited* [1899] 1QB 86 at page 91 said:

*".....summary 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" in rule 4 shows that the summary procedure there introduced is only intended to be had recourse to in plain and obvious cases".*

14. It is for the Plaintiff to establish that they have a **Cause of Action** in this case in terms of the facts and the Pleadings filed herein.
15. On the other hand, the **Defendant** must establish that the Plaintiff does not have a **Cause of Action** in this case.
16. The Plaintiff's contention is that there is a cause of action. The Plaintiff is claiming from the Defendants a sum of \$87,500 being the amount paid by the Plaintiff to one Yajbal Singh aka Janen Singh for 50% equity partnership in the restaurant and bar business. The acceptance of payment made to the First Defendant's account raises issues which can only be determined through the trial. The Plaintiff has pleaded that through the actions of the 2<sup>nd</sup> Defendant being an officer of the First Defendant Company, the Plaintiff has suffered losses and damages. The question that needs to be determined by the Court is 'should the First Defendant be held liable for the loss that has been suffered by the Plaintiff when the Plaintiff paid the monies to the First Defendant's account.
17. The **First Defendant** submitted that Plaintiff dealt with the deceased Yajbal Singh. He did not have any **contractual dealings** with the **First Defendant**. The **First Defendant** as a third party may have benefitted but was not party to any contractual dealings or arrangements. There is **no form of claim** either in tort or in contract against the **First Defendant**. There can be no general damages as no particulars of any form of loss has been pleaded against the **First Defendant**.
18. The **Striking out application** of the **First Defendant** is a **summary proceeding**. **Striking Out** is only appropriate to cases which are plain and obvious in nature.
19. Bearing in mind the **facts** of this case and the **nature of the pleadings** filed by the parties to this proceedings, this case cannot be classed as 'plain and obvious' in nature.
20. In this instant case, in summary, the Plaintiff is claiming for the losses and damages suffered by the Plaintiff through the actions of the 1<sup>st</sup> Defendant and the Deceased



Yajbal Singh. Yajbal Singh's Estate is administered by Josephine Kiron Singh who has been substituted as the party in place of the Deceased Yajbal Singh.

21. In considering the allegations and pleadings filed herein, I find prima facie tribal issues that ought to be determined by the test of evidence in a full hearing. The evidence given at the hearing will enable the court to determine what transpired between the Plaintiff, First and second Defendant and what were the arrangements reached between them, if any. Therefore, the Plaintiff at the outset has shown prima facie a reasonable cause of action which needs to be determined accordingly.

Whether the Plaintiff's Writ of Summons & the Statement of Claim is Scandalous, Frivolous or Vexatious & Abuse of Process of the Court

22. It is well established that jurisdiction to strike out claim or pleadings should be used very sparingly and only in exceptional cases: *Timber Resource Management Limited v. Minister for Information and Others* [2001] FJHC 219; HBC 212/2000 (25 July 2001).
23. In *National MBF Finance (Fiji) Ltd v. Buli* Civil Appeal No. 57 of 1998 (6 July 2000) the Court stated as follows:-

*"The Law with regard to striking out pleadings is not in dispute. Apart from truly exceptional cases the approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be proved.*

*If a legal issue can be raised on the facts as pleaded then the Courts will not strike out a pleading and will certainly not do so on a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of a factual contention. it follows that an application of this kind must be determined on the pleadings as they appear before the Court...."*

24. Whether the claim is Scandalous? Reference is made to the Supreme Court Practice 1993 (White Book) Vol. 1 at paragraph 18/19/14 states as follows-

*"The Court has a general jurisdiction to expunge scandalous matter in any record or proceedings (even in bills of costs, Re Miller (1884) 54 L.J.Ch. 205). As to scandal in affidavits, see O.41, r.6.'*

*Allegations of dishonesty and outrageous conduct, etc., are not scandalous, if relevant to the issue (Everett v. Prythergch (1841) 12 Sim. 363; Rubery v. Grant (1872) L.R. 13 Eq.443).*

*"The mere fact that these paragraphs state a scandalous fact does not make them scandalous" (per Brett L.J. in Millington v. Loring (1881) 6*

*Q.B.D. 190, p.196). But if degrading charges be made which are irrelevant, or if, though the charge be relevant, unnecessary details are given, the pleading becomes scandalous (Blake v. Albion Assurance Society (1876) 45 L.J.C.P. 663)."*

25. Whether the nature and contents of the Plaintiff's Claim in terms of the Writ of Summons and the Statement of Claim tantamount to **scandalous** and irrelevant facts and therefore makes the Plaintiff's Claim **Scandalous**?

According to the **First Defendant**, the Plaintiffs claim is so hopeless and defective that it will not succeed.

The Plaintiff submitted that the **First Defendant** has failed to disclose any Affidavit evidence to support the application to **strike out** the Plaintiff's Writ based on any existence of scandalous matters and cited case of *Shailendra Singh v. Waisake Ikanidrodro & others Civil Action No. 277 of 2014*; which stated 'that the power to **strike out, stay or dismiss under the inherent jurisdiction is discretionary...."**

The **First Defendant** did not file any Affidavit to support her claim of any existence of scandalous matters rather stated that this is one of the hopeless and defective claims against the **First Defendant** that will not succeed.

It would be appropriate for this Court to put the evidence to test at the full hearing in order to determine whether the Plaintiff's claim has scandalous matters or not. At this stage, that cannot be done within a summary hearing.

26. The issue of whether the Plaintiff's Claim is **frivolous** or **vexatious**? Reference is made to paragraph 18/19/15 of the Supreme Court Practice 1993, Vol. 1 (White Book) which reads as follows:-

*"By these words are meant cases which are obviously frivolous or vexatious or obviously unsustainable per Lindley LJ in Attorney General of Duchy of Lancaster v. L. & N.W.Ry [1892] 3 Ch. 274, 277; The Pleading must be "so clearly frivolous that to put it forward would be an abuse of the Court" (per Juene P. in Young v. Halloway [1895] P 87, p.90: ...."*

27. *In Devi v. Lal [2014] FJHC 75; HBC 120.2008* (7<sup>th</sup> February, 2014) - It was held as follows-

*"The Oxford Advanced Learners Dictionary of Current English 7th Edition defines the words "frivolous" and "vexatious" as:-*

***Frivolous:** "having no useful or serious purpose"*

***Vexatious:** "upsetting" or "annoying"*



*'Therefore, for a claim to be frivolous or vexatious, the Appellants must establish that the claim lacks merit (i.e. has no useful purpose) and is only to upset or annoy the Applicants'.*

28. The First Defendant submitted that according to the pleadings filed herein, the Plaintiff dealt with the Deceased Yajbal Singh and therefore did not have any contractual dealings with the First Defendant. There is no form of claim either in tort or contract. The Plaintiff referred to equity shares in his claim.

The Plaintiff submitted that the Plaintiff's claim needs to be heard and determined by the Court in terms of the law and evidence which the Plaintiff can only produce at the hearing proper.

29. Taking into consideration the above matters together with the written/oral submissions and arguments raised in Court by the both Counsels representing the parties to this proceedings, the First Defendant has failed to establish that the Plaintiffs claims against the First Defendant lacks merits and tantamount to frivolous and vexatious claim. The Plaintiff's claim is properly formulated and can be deliberated at a full hearing accordingly.

30. Whether the claim is otherwise an abuse of the process of the Court?

31. It is well settled that this Court has inherent jurisdiction to strike out the claim or pleadings for abuse of Court process and reference is made to paragraph 18/19/18 of the Supreme Court Practice 1993 Vol. 1,-

At paragraphs 18/19/17 and 18/19/18 of Supreme Court Practice 1993 (White Book) Vol 1 it is stated as follows:-

*"Abuse of Process of the Court"- Para. (1) (d) confers upon the Court in express terms powers which the Court has hitherto exercised under its inherent jurisdiction where there appeared to be "an abuse of the process of the Court." This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent the improper use of its machinery, and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation (see Castro v. Murray (1875) 10 P. 59, per Bowen L.J. p.63). See also "Inherent jurisdiction," para.18/19/18."*

*"It is an abuse of the process of the Court and contrary to justice and public policy for a party to re-litigate the issue of fraud after the self-same issue has been tried and decided by the Irish Court (House of Spring Gardens Ltd. v. Waite{1990} 2 E.R. 990 C.A)."*

*"Inherent Jurisdiction - Apart from all rules and Orders and notwithstanding the addition of para.(1)(d) the Court has an inherent jurisdiction to stay all*



*proceedings before it which are obviously frivolous or vexatious or an abuse of its process (see Reichel v. Magrath (1889) 14 App.Cas. 665). (para 18/19/18).*

32. In Halsbury's Laws of England Vol 37 page 322 the phrase "abuse of process" is described as follows:

*"An abuse of process of the court arises where its process is used, not in good faith and for proper purposes, but as a means of vexation or oppression or for ulterior purposes, or, more simply, where the process is misused. In such a case, even if the pleading or endorsement does not offend any of the other specified grounds for striking out, the facts may show it constitutes an abuse of the process of the court, and on this ground the court may be justified in striking out the whole pleading or endorsement or any offending part of it. Even where a party strictly complies with the literal terms of the rules of court, yet if he acts with an ulterior motive to the prejudice of the opposite party, he may be guilty of an abuse of process, and where subsequent events render what was originally a maintainable action one which becomes inevitably doomed to failure, the action may be dismissed as an abuse of the process of the court."*

33. The phrase "abuse of process" is summarized in Walton v Gardiner (1993) 177 CLR 378 as follows:

*"Abuse of process includes instituting or maintaining proceedings that will clearly fail proceedings unjustifiably oppressive or vexatious in relation to the defendant, and generally any process that gives rise to unfairness"*

34. The Plaintiff has commenced proceedings against the Defendants claiming a sum of \$87,500 being the amount paid by the Plaintiff to one Yajbal Singh aka Janen Singh for 50% equity partnership in the restaurant and bar business. The Plaintiff has pleaded that through the actions of the 2<sup>nd</sup> Defendant being an officer of the First Defendant Company, the Plaintiff has suffered losses and damages.

The question that needs to be determined by the Court is 'should the First Defendant be held liable for the loss that has been suffered by the Plaintiff when the Plaintiff paid the monies to the First Defendant's account?

It can only be determined by testing the evidence subjecting it to cross examination that would reveal what transpired and who should then be held liable for any loss and damage that is claimed by the Plaintiff (if any) at the end of the day.

Therefore, I find that the Plaintiff has used the Court process, in good faith and for proper purposes, and has not misused the Court machinery to commence



the proceedings and bring the same to conclusion. There is no abuse of court process by the Plaintiff as claimed by the First Defendant herein.

35. In Tawake v Barton Ltd [2010] FJHC 14; HBC 231 of 2008 (28 January 2010), Master Tuilevuka (as he was then) summarised the law in this area as follows:

"The jurisdiction to strike out proceedings under Order 18 Rule 18 is guardedly exercised in exceptional cases only where, on the pleaded facts, the plaintiff could not succeed as a matter of law. It is not exercised where legal questions of importance are raised and where the cause of action must be so clearly untenable that they cannot possibly succeed (see Attorney General -v- Shiu Prasad Halka 18 FLR 210 at 215, as per Justice Gould VP; see also New Zealand Court of Appeal decision in Attorney -v- Prince Gardner [1998] 1 NZLR 262 at 267."

36. Having perused and analyzed the issues raised by the First Defendant and the Plaintiff couple with the principles dealing with the present application to Strike out the Plaintiff's Writ of Summons and the Statement of Claim, this court does possess all the requisite material and evidence to reach a definite and certain conclusion as enumerated hereunder.


37. Accordingly, I make the following orders-

- (i) That the First Defendant's Summons seeking the Striking Out of the Plaintiff's Writ of Summons and the Statement of Claim hereby fails and is accordingly dismissed.
- (ii) That the Plaintiffs Writ of Summons and the Statement of Claim remains intact for Court's further consequent directions.
- (iii) The First Defendant to pay to the Plaintiff summarily assessed cost of \$750 within 14 days.
- (iv) Orders accordingly.

Dated at Suva this 25<sup>th</sup> day of July, 2017



cc: Nands Law, Suva  
Prem Narayan, Suva.

  
MR VISHWA DATT SHARMA  
Master of High Court, Suva