

IN THE HIGH COURT OF FIJI AT SUVA  
CIVIL JURISDICTION

Civil Action No. 322 of 2011

BETWEEN

MELVEEN RONALD SINGH

PLANTIFF

AND

PLUMBING SERVICES LIMITED

FIRST DEFENDANT

AND

NARENDRA PRASAD

SECOND DEFENDANT

**Counsel**

:

Mr. Singh S. for the Plaintiff

Mr. Hiuware for the 1<sup>st</sup> Defendant

Date of Hearing : 20<sup>th</sup> October, 2017

Date of Ruling : 01<sup>st</sup> November, 2017

---

## RULING

---

- [1] The plaintiff instituted these proceedings claiming damages for the injuries caused by the negligent driving of the 2<sup>nd</sup> defendant. The 1<sup>st</sup> defendant, Plumbing Serviced Limited was made a party to the proceedings on the basis that it was vicariously liable for the negligence of the 2<sup>nd</sup> defendant who at the time of the accident was its employee.
- [2] On 15<sup>th</sup> May, 2017 the 1<sup>st</sup> defendant filed summons for striking out the plaintiff's claim against under Order 18 rule 18 of the High Court Rules 1988 on the grounds that the 1<sup>st</sup> defendant company never existed and the cause of action of the plaintiff was barred by the provisions of the Limitation Act 1971.
- [3] The plaintiff on 24<sup>th</sup> August, 2017 filed summons seeking leave to amend the statement of claim by substituting "BERNADETTE SERA FILIPO NICHOLLS trading as PLUMBING AND PROPERTY SERVICES a Sole Trader business having its registered office at Auckland Street, Vatuwaqa, Suva" as the 1<sup>st</sup> defendant in the place of "PLUMBING SERVICES LIMITED". At the request of the counsel both these application were taken up for hearing together.
- [4] Ms. Bernadette Sera Filippo Nicholls filed the affidavit of reply on behalf of the 1<sup>st</sup> defendant which was objected to by the learned Counsel for the plaintiff on the ground that it has been filed two after the day nominated by the court to file it, without obtaining the leave of the court. The court also observes that this affidavit in reply has been filed on behalf of the 1<sup>st</sup> defendant company which, according to Ms. Bernadette Sera Filippo Nicholls, is not in existence. For these reasons the court rejects the affidavit in reply filed on 17<sup>th</sup> October, 2017.
- [5] Before going into the merits of the application for striking out the court must decide whether the party who made this application had the status to file it since she was not

a party the proceedings. She made the application for striking out on behalf of the 1<sup>st</sup> defendant which is not in existence. It is practically impossible for her to represent in court a company which is not in existence. Therefore, the application for striking out must necessarily fail on that ground alone. However, since the plaintiff has made an application to amend the statement of claim by substituting her in the room of the 1<sup>st</sup> defendant, she will be at liberty to file an application under Order 18 rule 18 if the plaintiff succeeds in his application for amendment.

[6] It is common ground that the 1<sup>st</sup> defendant company in fact existed but later Bernadette Sera Filipo Nicholls registered it as a sole proprietorship. The vehicle involved in the accident, DR415 had been registered in the name of Plumbing Services Limited which is borne out by the Vehicle Owners History tendered along with the affidavit of the plaintiff marked as 'DKS2'. The plaintiff could not have known that the status of the 1<sup>st</sup> defendant had changed.

[7] Order 20 rule 1 of the High Court Rules 1988 provides:

- (1) Subject to paragraph (3), the plaintiff may, without the leave of the Court, amend the writ once at any time before the pleadings in the action begun by the writ are deemed to be closed.
- (2) Where a writ is amended under this rule after service thereof, then, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on each defendant to the action.
- (3) This rule shall not apply in relation to an amendment which consists of-
  - (a) the addition, omission or substitution of a party to the action or an alteration of the capacity in which a party to the action sues or is sued, or
  - (b) the addition or substitution of a new cause of action, or
  - (c) (without prejudice to rule 3(1)) an amendment of the statement of claim (if any) indorsed on the writ,

unless the amendment is made before service of the writ on any party to the action.

[8] The 2<sup>nd</sup> defendant has not objected to the application. The second defendant has not even filed his statement of defence. Ms. Bernadette Sera Filipo Nicholls does not have

the status to object to this application on behalf of the 1<sup>st</sup> defendant for the reason that the 1<sup>st</sup> defendant company does not exist.

[9] For the reasons aforementioned the court makes the following orders:

1. The application for the amendment of the statement of claim is allowed.
2. The application to strike out the statement of claim of the 1<sup>st</sup> defendant is refused.
3. There will be no order for costs of these applications.



01<sup>st</sup> November, 2017

A handwritten signature in blue ink, appearing to read "L. Seneviratne", is written over a horizontal line. A large, curved blue mark is present above the signature.

Lyone Seneviratne

**JUDGE**