

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 331 of 2017

**BETWEEN** : **GARY ARTHUR FITTON** **PLAINTIFF**  
**AND** : **BRADLEY PAUL ANDREW CAMPBELL** **FIRST DEFENDANT**  
**AND** : **JULIA CAMPBELL** **SECOND DEFENDANT**  
**AND** : **SOUTH PACIFIC WATER SPORTS LIMITED** **THIRD DEFENDANT**

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**APPEARANCES/REPRESENTATION**

**PLAINTIFF** : Mr. Faktaufon [Vama Law]  
**DEFENDANT** : Ms. Fong [Jannadas & Associates]  
**RULING OF** : Acting Master Ms Vandhana Lal  
**DELIVERED ON** : 07th February 2019

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**INTERLOCUTORY JUDGMENT**

[Setting Aside Judgment by Default]

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**Introduction**

1. This is the Defendants summons (undated but filed on 28 March 2018) seeking orders for setting aside the judgment in default entered on 26 January 2018.

Said application is made pursuant to Order 2 rule 2 and Order 19 rule 9 of the High Court Rules.

The Defendants have filed an Affidavit of Bradley Paul Andrew Campbell sworn on 28 March 2018 in support of their application.

2. Said application is opposed by the Plaintiff who has filed this Affidavit in Opposition sworn on 31 May 2018.

3. Counsels for both parties were heard and they have handed their respective submission in court on the hearing date.

**How The Default Was Entered**

4. On 20 November 2017 the Plaintiff through its Solicitors filed a Writ of Summon with a Statement of Claim.

The claim is for refund of FJD\$177,070 for funds deposited into Second Defendant's account; payment for fishing gear purchased for Third Defendant; cash payment to First Defendant; payment for company incidental expense; payment of customs duty; payment of extra storage fees; payment of interest on loan; loss of income from January 2017 till date of Demand Notice; and travelling expenses. [The particulars of loss however are in the Australian dollars.]

Alternatively the Plaintiff is asking the court to assess the damages;

5. As per the Affidavit of Service of one Semi Voliti he deposed following:
  - He on 24 November 2017 personally served the First and Second Defendants at 77 Sunset Strip, Korotogo, Sigatoka.
  - He on 24 November 2017 personally served the Writ of Summon and Acknowledgement of Service on one Joeli Naua an employee at South Pacific Water Sports Limited. Joeli refused to sign the Acknowledgment of Service.
6. On 8 December 2017 the Defendants' Counsel filed an Acknowledgment of Service stating they intended to defend the action.
7. On 23 January 2018 the Plaintiff filed its Praecipe; Search for Statement of Defence; and Judgment in default of Statement of Defence.

The Judgment in Default was sealed on 26 January 2018.

**Ground For Making The Application To Set Aside**

8. Bradley Paul Andrew Campbell is a Company Director at 3<sup>rd</sup> Defendant and the husband of the Second Defendant.

He admits the Defendants were served with the Writ of Summon on or about 24 November 2017.

They then instructed Jamnadas and Associates to act as their Solicitors and hence forwarded them the document for perusal.

An Acknowledgment of Service was filed on or about 08 December 2017.

Their Solicitors informed them they had time until January 2018 to file/serve the Statement of Defence as the High Court had begun its legal vacation and the time for filing of the Statement of Defence did not run during the legal vacation.

Over the holiday discussion were held regarding the matter and documents were collected relating to the defence.

From their discussion it was determined a valid counter-claim would need to be filed for damages caused by the Plaintiff against First and Third Defendant.

It took time to get all required document and finalise the Statement of Defence as:

- *It was year-end and holiday period with parties involved in other responsibility;*
- *Defendants are based in Sigatoka with their Solicitors in Suva, hence meeting and discussion were held at a time convenient to all parties;*
- *Various document had to be searched for and located and thereafter delivered to the Solicitors in Suva.*

When their Solicitors attempted to file the Statement of Defence at the registry they were informed that they were unable to do so as the Plaintiff had already filed certain papers for a default judgment.

Neither of the Defendants or their Solicitors was served with the default judgment.

The delay is not in any way a substantial delay and there will no prejudice to the Plaintiff if judgment is set aside.

They have a meritorious defence and a counter-claim on following grounds:

- a) *The Plaintiff had invested certain monies into the 3<sup>rd</sup> Defendant to be part of the 3<sup>rd</sup> Defendant's sports fishing business and it was initially agreed he would be a partner of only the fishing vessel belonging to the 3<sup>rd</sup> Defendant. A partnership agreement was entered into. However within just a few months the Plaintiff's actions and behaviour made it impossible for him to remain a part of the business in any way and he was advised the partnership would be terminated and his investment sum returned.*
- b) *Several of the monetary claims within the Plaintiff's Statement of Claim are strenuously denied and had nothing to do with any of the Defendants.*
- c) *The 2<sup>nd</sup> Defendant is a private individual with absolutely no dealings with the business matters pleaded within the Plaintiff's*

*Claim and there is absolutely no reasonable cause of action against her. It would be unjust for any judgment to be made with her in regard to these matters as she had nothing at all to do with the business dealings between the 1<sup>st</sup> Defendant and Plaintiff, nor has she ever been a director or part of the 3<sup>rd</sup> Defendant in any capacity which the Plaintiff is well aware of and has been advised of, even through solicitors, several times.*

- d) In the lead up to the business partnership between the 1<sup>st</sup> and 3<sup>rd</sup> Defendants and the Plaintiff falling apart, the Plaintiff engaged in extreme, disruptive, toxic behaviour which severely interfered with and hampered the 3<sup>rd</sup> Defendants business.*
- e) As can be seen from the Counterclaim, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants validly claim the sum of over FJS300, 000 plus general damages and interest against the Plaintiff for his interference with the 3<sup>rd</sup> Defendants business, which has caused much strife and loss to the Defendants far in excess of what the Plaintiff himself is claiming.*

9. In Addition to the above they have annexed a Proposed Statement of Defence and Counterclaim.

#### **Grounds For Opposing The Application**

10. According to the Plaintiff, his counsel advised him the last day for the Defendants to file their Statement of Defence would have been 16 January 2018 taking into account the legal vacation.

Regardless of the legal vacation the Defendant's failed to file their Statement of Defence within time.

The Defendants Solicitors were on 27 March 2018 served with the Default Judgment.

He had instructed his solicitors to issue garnishee proceedings.

According to the Plaintiff, there was a partnership agreement stating he would be half owner of the Third Defendant Company. However the First Defendant did not take any steps to ensure this thus breaching the agreement.

He had confronted the First Defendant about shares in the Third Defendant company and that the First Defendant was making decision on behalf of the Third Defendant without consulting him. Hence, he asked for a refund.

He had on direction of the First Defendant deposited AUD\$70,000 into the bank account of Second Defendant. Hence he is also claiming against the Second Defendant.

11. In response the 2<sup>nd</sup> Defendant informed he did indeed work towards setting shares of the company to the Plaintiff.

Monies were not refunded to Plaintiff as they were to sit and work out appropriate amount to be paid out.

#### **Determination**

12. As per the notice dated 14 June 2017 the legal vacation commenced on 18 December 2017 and concluded on 12 January 2018.

The directive of the Honourable Chief Justice under the said notice was that *"the time of vacation shall not be reckoned in computation of times appointed or allowed by the High Court Rules for amending, delivering or filing of any pleadings"*.

13. Under Order 12 rule 4 time limited for acknowledging service was 14 days after service of the Writ [including the day of service] or where that time has been extended by or virtue of these Rules to that time on so extended.

The Defendants were served with the Writ of Summon on 22 November 2017. The 14 days period within which the Defendants were to file their Acknowledgement of Service was on 5 December 2017.

14. Order 18 rule 2 (1) states that:

*"subject to paragraph (2), a defendant who gives a notice of intention to defend an action must, unless the court gives leave to the contrary, serve a defence on the Plaintiff before the expiration of 14 days after the time limited for acknowledging service of the Writ or after the Statement of Claim is served on him or her whichever is the later"*.

15. Since the legal vacation commenced on 18 December 2017, the 14 days period pursuant to Order 18 rule 2 (1) expired on or about 16 January 2018.
16. Court file search do not show when the Defendants first attempted to file their Statement of Defence but was refused by the registry. Nor have Defendants confirmed date when the solicitor first attempted to the Statement of Defence.
17. However records do show that Plaintiff first filed his search for Statement of Defence on 23 January 2018 which was refused for correction.
18. The delay between time expired for filing Statement of Defence and the application for setting aside is some 02 months and few days. The Defendants have given their reason for delay.
19. The Defendants have shown they have a defence which discloses an arguable or triable issue and they further have a counterclaim against the Plaintiff.

20. Furthermore in the statement of claim the amount claimed is particularised in Australian dollars, however the total sum claimed is in Fijian dollars.

There is no explanation how this sum was calculated that is what exchange rate was used and for which date and why the rate for this particular date was used.

21. Considering the above I find it only proper and just that the judgment entered in default should be set aside and the Defendants be allowed to defend the matter.

**Orders**

22. Accordingly I make following orders:

- i. *The Default Judgment so sealed on 26 January 2018 is set aside;*
- ii. *The Defendants are to file and serve its Statement of Defence and Counter claim in 14 days [by 4pm on 21 February 2019].*

23. Considering the circumstances how the default judgment was entered I make orders that costs for this application shall be in the cause.



Vandhana Lal [Ms]  
Acting Master  
At Suva.