

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 14 OF 2015

BETWEEN : **NAINASO I RA HOLDING LIMITED** a limited liability company having its registered office at 33 Raojibhai Patel Street, Suva, P O Box 4132, Samabula Post Office, Suva.

PLAINTIFF

AND : **RAJNEEL KARAN SINGH** of Samuel K Ram Lawyers, 2nd Floor, Kamel Building, Kings Road, Ba Town, Legal Clerk.

1ST DEFENDANT

AND : **SAMUEL K RAM trading as SAMUEL K RAM LAWYERS**, a legal practice, duly established under the Legal Practitioners Decree, and having its registered office at 2nd Floor, Kamel Building, Kings Road, Ba, P. O. Box 3318, Ba.

2ND DEFENDANT

AND : **MATAQALI NAINASO HOLDINGS LIMITED**, a duly incorporated private company having it registered office at 2nd Floor, Kamel Building, Kings Road, Ba, P. O. Box 3318, Ba.

3RD DEFENDANT

AND : **YASAWA PROJECTS COMPANY LIMITED** a duly incorporated private company, having its registered office at 2nd floor, Kamel Building, Kings Road, Ba. P. O. Box 3318, Ba.

4TH DEFENDANT

AND : **CAPITAL GROUP INVESTMENTS (FIJI) LIMITED**, a duly incorporated private company having its registered office at Suva, Fiji, P O Box 15859.

5TH DEFENDANT

AND : **ANWAR KHAN** of Drasa, Lautoka, P. O. Box 5490, Lautoka
Businessman.

6TH DEFENDANT

AND : **KELEVI NABA** of Drasa, Lautoka, Retired.

7TH DEFENDANT

AND : **PATIMIO BACAIVALU**, of Drasa, Lautoka, Company Director.

8TH DEFENDANT

AND : **Waisea Ratubusa**, of Vatuwaqa, Suva, Pharmacist.

9TH DEFENDANT

Appearances : Mr S. Krishna for the second defendant/applicant
No appearance for the plaintiff/respondent

Date of Hearing : 12 November 2019

Date of Ruling : 04 March 2020

R U L I N G

[on amendment of statement of claim]

Introduction

[01] This an application for amendment of the statement of claim filed by Samuel K Ram trading as Samuel K Ram Lawyers, the second defendant/applicant (the '*second defendant*').

[02] On 29 July 2019, the second defendant filed a summons supported by an affidavit sworn by him (Samuel K Ram) seeking an order for amendment of the plaintiff's statement of claim on the ground that it does not disclose a reasonable cause of action against him, or may cause prejudice and embarrass or delay the fair trial of the action (*'the application'*).

[03] This is second application of this nature. Previously, Mr S. K. Ram, Barrister and Solicitor filed a similar application on behalf of the first defendant, his legal clerk while he (Mr Ram) was restrained, by an order of the Court, from appearing for the first defendant on the ground of conflict of interest. That application was struck out by the court on the basis that the statement of claim discloses reasonable cause of action against the first defendant.

[04] At the hearing, Mr Krishna of counsel for the second defendant made oral submission and also tendered his written submission. The plaintiff neither filed affidavit in opposition nor participated in the hearing of the matter.

The background facts

[05] The brief background facts so far as relevant to this application are as follows (I adopt the facts given in my previous ruling on 18 April 2019).

[06] Mr Rajneel Karan Singh (Rajneel), the first defendant is a law clerk at Messrs Samuel K Ram Lawyers. Mr Samuel K Ram (*'Ram'*) trading as Samuel K Ram Barrister and Solicitor is a legal practitioner, the second defendant (*'second defendant'*). The plaintiff's claim arises out of an allegation that both of them with other defendants acted fraudulently and colluded with the other defendants to deprive the plaintiff of their land which is valued at \$20m. It is alleged that the second defendant caused the first defendant to swear an affidavit in the winding-up proceedings to have the plaintiff company wound up even before its incorporation. Initially, a winding-up order was granted. It was however withdrawn on appeal after a protracted legal battle. It is also alleged that the first and the second defendants along with other defendants at the time of filing the winding-up petition, made representations to the High Court at Lautoka that were false, fraudulent and misleading in that they presented the winding-up petition naming a non-existent company to be the petitioner on their behalf. The plaintiff claims among other things \$20m against the defendants including the first and second defendants. The defendants are also facing the allegation of libel, slander and defamation.

[07] The allegation, according to the statement of claim, against defendants including the second defendant is as follows [paras 38, 39 and 41 of the statement of claim:

**"PARTICULARS OF FRAUD INDUCING THE ISSUE OF
IRREGULAR WINDING UP ORDER**

38. *That the 1st, 2nd, 7th, 8th and 9th Defendants knew that the third defendant was non-existent yet they agreed to file a Winding Up Petition in the 3rd Defendants name at the High Court in Lautoka thus causing the High Court to mistakenly and innocently issue a Winding Up Petition by mistake against the Plaintiff and eventually the issue of an irregular Winding Up Order, which has resulted in the permanent deprivation of the Plaintiffs \$20,000.000.00 leasehold Tourism Property from an irregularly issued Winding Up Order. These Defendants are jointly and severally liable.*

PARTICULARS OF FRAUD VIA FORGERY AND DECEPTION

39. *That the 1st, 2nd, 7th, 8th and 9th defendants knowingly filed in the High Court, forged documents and documents that contained signatures obtained by these Defendants from Mataqali Nainaso members through falsely pretending to these members that their signatures were to be used for the release of funds from the 10th Defendant. Our signatures presented were simply forged. The members were not informed that their signatures were to be used for winding up the Plaintiff company. The 1st and 2nd Defendants swore affidavit and filed them in the High Court in furtherance of the fraud. This has resulted in the issue of the irregular Winding up Order against the Plaintiff causing the loss of its \$20,000,000.00 Tourism Leasehold property. These Defendants are jointly and severally liable.*

PARTICULARS OF DEFAMATION

41. *That the 1st, 2nd, 3rd, 4th, 6th, 7th, 8th and 9th Defendants in filing false and fraudulent documents and falsely alleging the Plaintiff Company was insolvent and falsely alleging that the Plaintiffs substratum had failed and having these statements published in the newspapers and in the Government Gazette has caused the Plaintiff Company and its Directors great loss in standing and trust. The Directors of the Plaintiff Company have since been removed from positions of trust in their community and subjected to ridicule. These Defendants are jointly and severally liable."*

The Law

- [08] The application to strike out is made under Order 18 Rule 18 of the HCR, which so far as material states that:

“Striking out pleadings and indorsements (O 18, R18)

18 (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement if 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;*
- (b) it is scandalous, frivolous or vexatious;*
- (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 paragraph1 (a).*

...” [Emphasis provided]

Discussion

- [09] The defendant applies to the court for an order directing the plaintiff to amend the plaintiff’s claim. He relies on limb (c) of Rule 18 of the HCR that it may prejudice, embarrass or delay the fair trial of the action.

- [10] The second defendant’s application itself delays the fair trial of the action because he has filed his application seeking an order that the plaintiff should amend its claim in view of the settlement with the TLTB. He has filed his application at the trial stage on 29 July 2019. The initial trial dates fixed from 14-16 November 2016 were vacated on an application made by the defendants. Thereafter, the matter was re-fixed for trial from 10 to 12 April 2017.

- [11] It is worthy to note that the second defendant has through his solicitor filed a defence to the claim on 2 March 2015. In his defence, he among other things states that: the claim discloses no reasonable cause of action; is frivolous and/or vexatious and/or scandalous; and is an abuse of process of court and that the allegations are vague and do not contain any particulars.
- [12] The second defendant has filed a full and comprehensive defence to the claim. He did not apply by letter for the particulars he requires. The court may refuse to make the order for the particulars of pleading unless of opinion that there were good reasons for an application by letter not having been made (see: O 18, R 11 (6)). I do not find any reason why the second defendant could not apply by letter for further particulars.
- [13] As a matter of fact, the plaintiff had settled and withdrawn their claim against TLTB. The second defendant seeks discovery of the details of the settlement and documents relating to the settlement. The settlement was between the plaintiff and TLTB. The plaintiff may have settled with TLTB on without prejudice basis. The second defendant has nothing to do with the settlement between the plaintiff and TLTB. Therefore, the second defendant is not entitled to recover the details of settlement with TLTB.
- [14] The statement of claim still discloses reasonable cause of action against the second defendant. The plaintiff had pleaded material facts on its statement of claim.
- [15] I find that the statement of claim as pleaded discloses a reasonable cause of action against the second defendant and that there are sufficient particulars in the statement of claim as regards to the allegation it makes namely fraud, defamation and damages.
- [16] The second defendant cannot tell the plaintiff as to how they should submit their statement of claim. It is their claim and they should decide what to plead in their claim. In my opinion, the second defendant is not entitled to seek an order that the plaintiff must amend its statement of claim. The defendant should defend the claim which is against him.

Conclusion

- [17] For the above reasons, I conclude that the statement of claim provides sufficient particulars as regards to the allegation it makes particularly in respect of fraud, defamation and damages. Therefore, the second defendant is not entitled to seek an order for amendment of the statement of claim.
- [18] The second defendant is also not entitled to the discovery of the documents or the details of the settlement of the claim as between the plaintiff and iTaukei Land Trust Board.
- [19] I would accordingly dismiss the second defendant's application with no order as to costs.

The result

1. Second defendant's application dismissed.
2. There shall be no order as to costs.
3. The matter is now adjourned for mention to fix hearing at 9.30 am on 12 March 2020

M. H. Mohamed Ajmeer

4/3/20

M. H. Mohamed Ajmeer

JUDGE



At Lautoka

04 March 2020

Solicitors:

For the second defendant/applicant: Krishna & Company, Barristers & Solicitors