

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 354 of 2019

BETWEEN: **BEIJING QUALITY ONLINE INTERNATIONAL TRADING CO. LTD** of Room 715,
No. 23 Huixin East Street, Chaoyang District, Beijing, People's Republic of China

PLAINTIFF

AND: **QUALITY ONLINE (FIJI) PTE LTD** a limited liability company having its registered office at
Lot 1 Daya Mati Road, Vatuwaqa, Suva.

FIRST DEFENDANT

AND: **SANGEETA DEVI REDDY-BRIDGEMAN** of Naitata Road, Navua, Director.

SECOND DEFENDANT

BEFORE: Hon. Justice V D Sharma

COUNSEL: Mr. O. Driscroll - for the Plaintiff
Mr S. Wally (with Mr. Tuitoga) - for the Defendants

Date of Ruling: 16th March, 2020 @ 9.30 am

RULING

*[Summons for extension of time to file a joint Statement of Defence pursuant to
Order 3 Rule 4 (1) and (2) of the High Court Rules 1988 and the Inherent Jurisdiction of this Hon. Court]*

INTRODUCTION

- [1] Before court is 1st and 2nd Defendants Summons seeking for the following orders:
- (a) That the Defendants be granted an extension of time to file a joint Statement of Defence;
 - (b) That the costs of this application be in the cause;
 - (c) Such other or further order as this Honourable Court deem just.
- [2] The application is made pursuant to *Order 3 Rule 4 (1) and (2) of High Court Rules 1988* and the inherent jurisdiction of this Honourable Court.
- [3] The Plaintiff **opposed** the application on the grounds that the **explanation given by the Defendants is inadequate and the time calculation is incorrect.**
- [4] The Plaintiff furnished court with written submissions and the parties to the proceedings argued the matter accordingly.

THE LAW

- [5] *Extension etc of time (O 3, R 4)*

4 (1) The court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules, or by any judgment, order or direction, to do any act in any proceedings.

(2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.

(3) The period within which a person is required by these Rules, or by any order or direction to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the Court being made for that purpose, provided that wherever the period for filing any pleading or other document required to be filed by these Rules or by the Court is extended whether by order of the Court or by consent a late filing fee in respect of each extension shall be paid in the amount set out in Appendix 2 by the party filing the pleading or other document unless for good cause the Court orders that some or all of the same be waived.

- [6] This rule is applicable to time fixed by High Court Rules or by Court irrespective of whether application is made after the time had expired.

Consideration of the Application

- [7] The issue for this court to determine is "whether the Defendants should be granted an extension of time to file a joint statement of defence?"
- [8] The Plaintiff filed his writ of summons on 9th October 2019. Subsequently, the defendants filed

their Acknowledgment of service on 18th October 2019 but failed to file their statement of defence within the stipulated time frame in the high Court Rules 1988.

- [9] The High Court of Fiji in *Vanualevu Hardware (Fiji) Limited v Labasa Town Council* [2016] FJHC 82: HBC29.2012 quoted the case of *Skinner v. Commonwealth of Australia* [2012] FCA 1194 (31 October 2012)-

whereby an Order was made for filing of Further Amended Statement of Claim and Further Amended Application by 5 September 2012 failing which proceeding was to be dismissed. Plaintiff failed to file the documents by 5 September 2012 but was ready to file on 6 September 2012.

The Federal Court of Australia exercised its powers granted under Rule 1.39 of Federal Court Rules to extend time fixed by the rules or by court, whether or not, application to extend time is made after the time fixed has expired.

The Court held that it has jurisdiction/powers to extend time fixed by the rule and the Court even if application is made after time has expired.

The Federal Court in Skinner stated as follows:-

"10. The discretionary power conferred by the rule is a power to be exercised to relieve against injustice. Thus, when considering a comparable provision in the Supreme Court Rules 1970 (NSW), Wilson J in *FAI General Insurance Company Limited v. Southern Cross Exploration NL* [1988] HCA 13; (1988) 165 CLR 268 at 283-284 observed: The plain meaning of these words is very wide. The court may extend "any time" fixed by "any order" and may do so as well after as before the time expires and even though the application to extend is not made until after the time has expired. As Baggallay LJ said in *Carter v. Stubbs* [(1880) 6 QBD 116 at 120] of the analogous English rule, it gives "very full discretionary power; indeed, I can hardly imagine a more extended discretion". It is a remedial provision which confers on a court a broad power to relieve against injustice. The discretion so conferred is not readily to be limited by judicial fiat. The fact that it manifestly is a power to be exercised with caution and, in the case of conditional orders, with due regard to the public policy centered in the finality of litigation does not warrant an arbitrary limitation of the power itself, not expressed in the words of the rule, so as to deny its capacity to apply to circumstances such as those which are to be found in the present case. It would be wrong to so read the rule as to deny to a court power to prevent injustice in circumstances where the party subject to a conditional order ought to be excused from non-compliance.

An argument was there rejected that the power did not extend to "revive an action which stands dismissed". Brennan, Deane and Dawson JJ agreed with Wilson J. (1988) 165 CLR at 286."

- [10] The following factors identified in *Skinner's case* are those applied by courts in Fiji and will also apply to *Order 3 Rule (4) and (2) of the High Court Rules 1988-*

(i) Length of Delay

The Writ of summons was served on 16th October, 2019. The Acknowledgment of Service was filed and the Statement of Defence was due to be filed on 13th November, 2019 in terms of the High Court Rules 1988. The Defendants sought time to extend the time of filing by consent of the Plaintiff pursuant to Order 18 Rule 2 (3). By an email dated 29th November 2019, the Plaintiff refused the consent sought. Thus, the Summons seeking Extension of Time was filed on 10th December 2019.

According to the Plaintiff, he refused to give consent 2 weeks later.

(ii) Reasons for Delay

There were huge number of documents and not furnished by the Defendants in time to also claim for counter claim. The alleged counter claim could not be filed as the Defendants were informed that the company they intended to counterclaim against was not the Plaintiff entity.

Plaintiff submitted that the Defence was late by 27 days. The length of delay somewhat is short in failing to file the Statement of Defence. *Order 3 Rule 4 (2) of the High Court Rules 1988* empowers this court to extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.

(iii) Merits on Defence

Proposed Statement of Defence has been annexed herein. The Defendant says at paragraph 8 that there was no agreement as to the transfer of the second defendant's shares in the first defendant to the plaintiff. It was the Plaintiff's representatives who were forcing the second defendant to transfer her shares.

At paragraph 9 the Defendant says she was under duress by the plaintiff's representatives to sign the investment agreement and not any opportunity for independent legal advice

The Defendants further stated that as per Fiji Revenue and Customs Authority Standard interpretation guidelines 2018, the equipment's were brought under the name of the first defendant in Fiji which was accorded duty concessions and therefore the Plaintiff cannot take custody of the equipment. The Statement of Defence was ready for filing in late November 2019.

The Plaintiff submitted that according to the proposed defence, there is no evidence to support that the money sent was the consultancy fees. No explanation for \$ \$97,000 but confirms receiving \$12,400. Proposed Defence is a bad denial and should not be accepted.

The proposed Statement of Defence herein raises issues that need to be determined on merits at a full hearing.

- [11] The Plaintiff's Writ of Summons was commenced in this court on 9th October, 2019. After the service was effected on the defendants, an acknowledgment of service was filed.
- [12] The Defendants admit that the Statement of Defence was out of time by at least one (1) day and sought for consent from the Plaintiff to file the same out of time which according to the Plaintiff was refused some two (2) week later.
- [13] This prompted the Defendants to file the Current Summons and seek the orders as enumerated at paragraph 1 (a) -(c) hereinabove.
- [14] I have taken into consideration the submissions of the parties to this proceedings and the legal principles.
- [15] I find that the length of delay in filing the Defendants Statement of Defence was not too far away from the required fourteen (14) days' time within which the same should have been filed.

- [16] Further, it can be ascertained from the proposed Statement of Defence that there are triable issues and merits that may give rise to the Defence in the proposed Statement of Defence annexed the Defendants Summons and Affidavits.
- [17] Order 3 Rule 4 (1) and (2) of High Court Rules of 1988 are very clear and specific and very much applicable to the current application and before court seeking to file the Statement of Defence out of time.
- [18] The application proceeded to hearing and therefore it entitles the Defendants sum costs. However, the Defendants did not file the Statement of Defence on time as required by law so it is only appropriate that no costs be granted rather parties to bear their own costs.
- [19] Following are the orders of this court:

FINAL ORDERS

- [1] The defendants are hereby granted an extension of time to file and serve a Joint Statement of Defence within fourteen (14) days' time frame.
- [2] The Plaintiff is granted fourteen (14) days' time thereafter to file and serve their Reply to Joint Statement of Defence.
- [3] Each party to bear their own costs at the discretion of this court.
- [4] The matter is now remitted to the Senior Court Officer who will allocate the same to the Master of the High Court for the cause to be completed according to the High Court Rules.
- [5] Orders accordingly.



(Handwritten signature in blue ink)

VISHWA DATT SHARMA
JUDGE
SUVA
16th Day of March, 2019

cc: O 'Driscoll & Co., Suva
Hannif Tuitoga, Suva