

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 176 of 2012

BETWEEN: RONEANE LOUISE BRADLEY of 29 Gomati Street, Tamavua, Suva, Sales Marketing.

PLAINTIFF

AND: STEPHEN DALZIEL ANGUS c/o Royal Suva Yatch Club, Suva.

DEFENDANT

BEFORE: Hon. Justice Vishwa Datt Sharma

COUNSEL: Mr. Isireli Fa - for the Plaintiff
Mr. O'Driscoll for the Defendant

Date of Ruling: 20th January 2021 @ 9.30 am.

RULING

*[Leave to Amend Statement of Claim pursuant to
Order 20 Rule 5 of the High Court Rules 1988]*

INTRODUCTION

1. Before court is the Plaintiff's Summons seeking for the following orders:
 - (a) *That the Plaintiff be granted leave to amend its Statement of Claim dated 28th July 2014, and to file and serve the same on the Defendant;*
 - (b) *That the costs of this application be costs in the cause.*
2. The application is made pursuant to **Order 20 Rule 5 of High Court Rules 1988** on the grounds contained in the Affidavit deposed by Sinate St. John filed in support of this application.
3. The Defendant filed an Affidavit in Reply deposed by Stephen Dalziel Angus and **opposed** the application.
4. No written submissions were filed by the Parties to this proceeding.

THE LAW

5. The law in relation to amendments is well settled. **Order 20 Rule 5 of the High Court Rules, 1988** is the relevant provision coupled with several case authorities on this issue.
6. **Order 20 Rule 5** gives this Honourable court the power to allow for the seeking party, leave to amend their pleadings at any stage of the proceedings on the basis that such amendment sought is for the purpose of determining the real question in controversy between the parties to any proceeding.

PLAINTIFF'S CASE (SUMMARISED)

7. That the Plaintiff's case has progressed through the Court and has reached the stage where copy pleadings have been filed but no hearing date has been fixed for this matter.
8. That on 28th May 2015, Messrs. Fa & Company filed a Notice of Change of Solicitors in Court.
9. The Plaintiff now wishes to amend the Statement of Claim.
10. That the proposed Statement of Claim properly blends the relevant facts in relation to the Plaintiff's claim against the Defendant and have also set out clear causes of action against them, which clearly identify the Plaintiff's complaints and the issues to be determined by this Court.
11. That the facts and causes of action pleaded have existed ever since the original Statement of Claim was filed in this matter on the 17th of October, 2012.
12. That the Amended Statement of Claim proposed to be filed in this matter will clearly identify the issues in dispute between the Plaintiff and Defendant and will allow the Court to make a clear determination on the issues raised by the Plaintiff.
13. That the Proposed Amended Statement of Claim is filed as Annexure A.

DEFENDANT'S CASE (SUMMARISED)

14. That the amendment is opposed on the basis that the existing Statement of Claim is sufficient to allow the Defendant's Solicitor to argue constructive trust or equitable interest as alleged.
15. That there had been a previous amendment made by the Defendant's previous lawyer.
16. That he believes that this further change is a mere tactic to delay the determination and disposal of the Plaintiff's claim therefore is not fair and unjust to him. That he is unemployed and not getting any younger.
17. That the Plaintiff's application be denied for any further amendment and Order that a pre-trial conference minutes to be filed in 7 days timeframe.
18. That he seeks costs against the Plaintiff in the sum of \$2,000.
19. Alternatively, should this Honourable Court decide to grant the Plaintiff's application, he seeks \$2,000 as costs.

THE TEST FOR GRANTING AMENDMENTS

20. The test to be applied is whether the amendment is necessary in order to determine the real controversy between the plaintiff and the defendants and that it does not result in injustice to the other party.

ANALYSIS AND DETERMINATION

21. I will now apply the test to determine the pending issue whether the Plaintiff's application seeking leave to amend the Statement of Claim be acceded to by this court?
22. This Court notes that previously an application seeking leave to amend the Statement of Claim was made by the Plaintiff's Counsel on 03rd December, 2013 and was accordingly granted on 25th July, 2014.
23. Subsequent to above, the Plaintiff has currently filed a formal application and sought for an order for **leave to file an amended statement of Claim**.
24. The application was **opposed** by the **Defendant** on the basis that the existing Statement of Claim is sufficient to allow the Defendant's Solicitor to argue constructive trust or equitable interest as alleged.
25. The Plaintiffs contention is that the proposed Statement of Claim properly blends the relevant facts in relation to the Plaintiff's claim against the Defendant and also sets out clearly causes of action against them, which clearly identify the Plaintiff's complaints and the issues to be determined by this Court.
26. Further, the Amended Statement of Claim proposed to be filed in this matter will clearly identify the issues in dispute between the Plaintiff and Defendant and will allow the Court to make a clear determination on the issues raised by the Plaintiff.

27. The Defendants' contention is otherwise and states that the existing Statement of Claim is sufficient to allow the Defendant's Solicitor to argue constructive trust or equitable interest as alleged.
28. Therefore, there is no need for a further amendment of the Statement of Claim by the Plaintiff.
29. The Cause of Action that is now being sought to be amended reads '*The Plaintiff claims that at all material times, it was the intention of the Plaintiff and the Defendant that the property comprised in Certificate of Title No. 26575 being Lot 2 On Deposit Plan No. 5643 situated at 34 Gardiner Road, Nasese registered in the name of the Defendant was a family property. That the Defendant is a Constructive Trustee of a one half share in the property for and on behalf of the Plaintiff. A Declaration that the Plaintiff has $\frac{1}{2}$ share of the property comprised in Certificate of Title No. 26575 being Lot 2 On Deposit Plan No. 5643.*'
30. The amendments sought herein are necessary and crucial to assist the Court in arriving at determining the crux of the matter and will be able to clearly identify the issues in dispute between the Plaintiff and Defendant in terms of the Property *comprised in Certificate of Title No. 26575 being Lot 2 On Deposit Plan No. 5643 for once and for all.*'
31. I have taken into consideration the following case authorities which deal with the principles of amendments-
- (a) *Fiji Electricity Authority v Balram & Others [1972] FJLawRp 4; [1972] 18 FLR 20 (3 March 1972)* Goudie J said-
- "An amendment to pleadings may be permitted by the court at any stage of the proceedings for the purpose of determining the real question in controversy and, if it can be made without injustice to the other side should be allowed however late, and however negligent or careless may have been the first omission.*
- (b) *Aerolink Air Services Pty Ltd v Sunflower Aviation Limited [2017] FJHC 181; HBC013.2011* - the court said at paragraph 4:
- "..General principles for grant of leave to amend (rr5, 7 and 8)-It is a guiding principle of cardinal importance on the question of amendment that, generally speaking, all such amendments ought to be made "for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defects or errors in any proceedings." (see per Jenkins L. J. in R. L. Baker Ltd v Medway Building & supplies Ltd[1958] 1 W.L.R. 1216; [1958] 3 All E.R. 540. P. 546)."*
- (c) *Cropper v Smith (1883)*, Bowen L.J notes:
- '..It is a well-established principle that the object of the court is to decide rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights. I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or grace. It seems to me that as soon as it appears that the way in which a party has framed his*

case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected if it can be done without injustice, as anything else in the case is a matter of right"

32. In the light of the aforesaid reasons, I find that the **amendment** sought by **Plaintiff** is necessary in order to iron out and determine the **dispute** between the parties in terms of the **Property comprised in Certificate of Title No. 26575 being Lot 2 On Deposit Plan No. 5643.**
33. Further, I find that the **proposed amendments** sought by the **Plaintiff** in terms of the Statement of Claim **arise out of the same facts** and the **Plaintiff's cause of action** pleaded by the Plaintiff herein.
34. Therefore, bearing above in mind, I find that there will be **no prejudice** caused to the **Defendant** in anyway whatsoever upon **grant of the leave to amend the Plaintiff's Statement of Claim.**

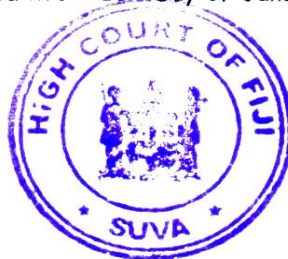
IN CONCLUSION

- (a) The **Plaintiff's** application seeking leave to amend the Statement of Claim succeeds.
- (b) There will be an order for costs summarily assessed at a sum of \$500 against the Plaintiff to be paid to the Defendant within 14 days' time frame.

FINAL ORDERS

1. The **Plaintiff's Summons** seeking leave to amend the **Statement of Claim** is hereby granted.
2. The **Plaintiff** to file and serve their **Amended Statement of Claim** within 14 days' time frame after the delivery of this decision.
3. The **Defendant** is at liberty to file/serve any **Response** within 7 days thereafter.
4. The substantive matter is scheduled for mention on 25th February 2021 @ 9-30 am.
5. **Orders accordingly.**

Dated at Suva this 20th Day of January, 2021




VISHWA DATT SHARMA
JUDGE

cc: Fa & Comapny, Suva.
O'Driscoll & Co.Suva.