

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

CIVIL ACTION NO.: HBC 377 of 2018

**BETWEEN : SAYED GAFFAR SHAH BUILDERS
PLAINTIFF**

**AND : MAYALE INVESTMENT LIMITED
DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Not Present [Not Represented]
DEFENDANT : Ms R. Lal [Lal Patel Bale Lawyers]
RULING BY : Acting Master Ms Vandhana Lal
DELIVERED ON : 27 April 2022
17 Ms

INTERLOCUTORY RULING

1. This is the Defendant's application seeking orders for the claim by the Plaintiff be struck out as it fails to disclose a cause of action against the Defendant.

2. The Plaintiff's claim is outlined as follows:
 - i. *The plaintiff operates a Registered Business based at Votualevu, Nadi namely Sayed Gaffar Shah Builders.*
 - ii. *The defendant is a registered business at Nadi Town, Nadi.*
 - iii. *The defendant engaged the plaintiff's company to supply trucks and excavator for Cartage of Soapstone from Qeleloa Nadi to Denarau South.*
 - iv. *The defendant was invoiced for cost of services provided.*

- v. *The defendant at numerous times either denied or failed the honour any demands for payment by the plaintiff.*
- vi. *The plaintiff has to make monthly installment to commercial banks to meet his payment requirements.*
- vii. *The plaintiff during all this time suffered loss in business due to neglect by the defendant to clear their debts.*

Wherefore the plaintiff claims

a. Judgment in the sum of \$54,214.95.

3. According to the Defendant's counsel, the statement of claim does not provide any date of contract or specify the work that was carried out by the Plaintiff. For this reason, the Defendant is unable to advance a fit and proper defence. Therefore, the Defendant seeks to have the claim struck out with cost.
4. The claim does mention that the Plaintiff had invoiced the Defendant for trucks and excavator supplied for cartage of soapstone from Qeleloa Nadi to Denarau and seeks judgment in such of \$54,214.95.
5. I find there is a cause of action outlined however the plaintiff has failed to comply with Order 18 rule 7 and Order 18 rule 11 of the High Court Rules.
6. Order 18 Rule 7 reads:

(1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality-

(a) which he alleges makes any claim or defence of the opposite party not maintainable; or

- (b) which, if not specifically pleaded, might take the opposite party by surprise; or*
- (c) which raises issues of fact not arising out of the preceding pleading.*

7. Whilst Order 18 Rule 11 states:

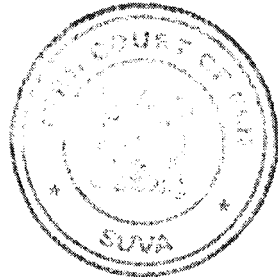
- (1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words- (a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and (b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.*
- (2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed 3 folios, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served and, if so, when, or is to be served with the pleading.*


8. Instead of striking out the claim it's only proper that the Plaintiff is allowed to amend its statement of claim stating out particulars of the invoices he raised to the Defendant and details of contract if any entered between the parties.

9. The Plaintiff is to file/serve an amended statement of claim by ^{03 June}~~20 May~~ 2022.

10. The Defendant is entitled to cost of this application. The Plaintiff is to pay the Defendant cost summarily assessed at \$500 and to be paid by ^{03 June}~~20 May~~ 2022.

11. Should the Plaintiff fail to abide by the orders, the claim may be struck out.




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Vandhana Lal [Ms]
Acting Master
At Suva.

27 April 2022

TO:

1. **Suva High Court Civil Action No. HBC 377 of 2018;**
2. **Sayed Gaffar Shah Builders**, the named Plaintiff appearing in person;
3. **Lal Patel Bale Lawyers**, solicitors for the Defendant.