

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

CIVIL ACTION NO.: HBC 233 of 2019

BETWEEN : HANSONS SUPERMARKET PTE LIMITED
PLAINTIFF

AND : SUN (FIJI) NEWS LIMITED trading as FIJI SUN
FIRST DEFENDANT

: PETER LOMAS
SECOND DEFENDANT

: NASINU TOWN COUNCIL
THIRD DEFENDANT

: NIMATARI COLAUDOLU
FOURTH DEFENDANT

: THE CONSUMER COUNCIL OF FIJI
FIFTH DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Ms. Lutu with Ms. P. Ram [Shelvin Singh Lawyers]

FIRST and SECOND DEFENDANTS : Mr. N.R. Nand [Patel Sharma Lawyers]

THIRD and FOURTH DEFENDANTS : No Appearance made [In House Counsel, Nasinu Town Council]

FIFTH DEFENDANT : Ms. J. Lal [In House Counsel, Consumer Council of Fiji]

RULING BY : Master Ms Vandhana Lal

DELIVERED ON : 01 August 2023

INTERLOCUTORY RULING
[Application to strike out the claim against the Fifth Defendant]

1. The Plaintiff filed its claim for defamation against the Defendants for publication of a newspaper article in the Fiji Sun Newspaper on 05th June 2019. Other cause of actions outlined by the Plaintiff is for falsehood and negligence.
2. The Fifth Defendant is an independent statutory organization established under the Consumer Council Act that aims to promote and protect consumer rights and interest. It owes duty of care to the consumers to act in their best interest.
3. The Fifth Defendant has made an application to have the Plaintiff's statement of claim struck out on the grounds it discloses no reasonable cause of action against the Fifth Defendant; the claim is scandalous, frivolous or vexatious; will prejudice, embarrass or delay the fair trial of the action and is an abuse of process of the court.
4. According to the Fifth Defendant they are not the publishers of the article and neither did they make the allegation.

It further denies that it was involved in destruction and/or condemnation of any meat as alleged on paragraphs 28 and 29 of the statement of claim.

According to it pursuant to the Food and Safety Act, the obligation to destroy any meat rests with the Third and Fourth Defendants.

The Fifth Defendant claims it acted in good faith at all times and by virtue of Section 12 of the Consumer Council Act it is not liable for any action or omission conducted in good faith.

It further alleges the Plaintiff failed to disclose how the Fifth Defendant acted in bad faith and/ or it owed the Plaintiff any duty of care.

According to the Fifth Defendant, its employees acted on a complaint and investigated the Plaintiff's supermarket premises. Acting in line with its powers it issued a warning letter upon inspecting the supermarket freezers and ascertaining that the meat was of poor quality.

According to the Fifth Defendant, the Fourth and Fifth Defendants sought consent from the management of the Plaintiff Company to inspect the freezers.

It also issued to the Plaintiff a Market Surveillance sheet highlighting the issues found at the Supermarket which affected the consumer's interest.

The Fifth Defendant claims that it did not make any comments to the First Defendant's team present at the Plaintiff's supermarket and that it was the Fourth Defendant who made the comments.

Hence the fifth Defendant, claims the Plaintiff has failed to disclose how the Fifth Defendant acted in bad faith and was involved in the condemnation of meat. The Plaintiff has also failed to particularize why it is entitled to general damages and how the Fifth Defendant damaged the Plaintiff's reputation.

The Plaintiff's claim is statute barred under Section 12 of Consumer Council Act and that it had acted within the ambit of its function under Section 6 of Consumer Council Act.

5. A perusal of the claim shows there are facts in dispute:


- *Where was the inspection actually carried out i.e. at the supermarket freezer or the underground bulk freezer; According to the Plaintiff the goods were taken from an underground freezer*

where customers do not go and these goods were not offered for sale.

- *Were these items on offer for sale?*
- *Did the Fifth Defendant and/or its employee act in good faith to get protection under Section 12 of the Consumer Council Act?*

6. These are matters for trial and cannot be summarily decided on pleadings alone.
7. Hence the Fifth Defendant's application of 20th September 2019 is struck out.
8. The Fifth Defendant is to pay the Plaintiff cost summarily assessed at \$1,000 and to be paid by 11 August 2023.




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Vandhana Lal [Ms]
Master of the High Court
At Suva.

01 August 2023

TO:

1. **Suva High Court Civil File No. HBC 233 of 2019;**
2. **Shelvin Singh Lawyers, Solicitors for the Plaintiff;**
3. **Patel Sharma Lawyers, Solicitors for the First & Second Defendants;**
4. **In House Counsel, Nasinu Town Council, for the Third and Fourth Defendants;**
5. **In House Counsel, Consumer Council of Fiji, for the Fifth Defendant.**