

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 236 of 2024

BETWEEN:

AIR PACIFIC LIMITED
PLAINTIFF

AND:

WABS PACIFIC PTE LIMITED & ORS
DEFENDANTS

BEFORE:

Acting Master L. K. Wickramasekara

COUNSELS:

Mr. N. Prasad for the Plaintiff
Mr. V. Anand for the 1st, 2nd and 5th Defendants
Mr. A. Rayawa for the 3rd Defendant
Mr. P. Niubalavu for the 4th Defendant

Date of Ex-Tempore Ruling:

17th October 2025

EX-TEMPORE RULING

(Summons for Summary Judgment as against 1st, 2nd and 5th Defendants)

Counsel for the Plaintiff submits to Court that the 1st, 2nd and 5th Defendants have failed to comply with the Orders made by the Court on the last date and is in breach of the Unless Order made therein.

It is also submitted that the 5th Defendant (Pursuant to the Unless Order made on 09/09/2025) paid costs of \$2000.00 by way of a cheque but it was dishonored by the Bank. Counsel for the 1st, 2nd and 5th Defendant submit to Court that he was newly

retained and received the file only yesterday. He is, however, yet to file a Notice of Change of Solicitors.

He claims that previous Counsel for the 1st, 2nd and 5th Defendant had gone abroad on a personal commitment.

Court notes that the Summon for Summary Judgment had been filed on 31/01/2025.

It was first called before the Court on 18/03/2025 and the Court granted 21 days to the Defendant's to file and serve therein a Response and made an Unless Order for payment of \$1000.00 costs in failure to comply with filing a Response within the given time.

On 14/05/2025 when the matter was next called to check on compliance, the 1st, 2nd and 5th Defendant's had failed to file their Response.

Accordingly, the Court had ordered the Defendant's to pay the costs as per the Unless Orders made on 18/03/2025 and a further Unless Order was made to the effect that in failure to pay the costs (as ordered) on or before 04/06/2025, the pleadings of the Defendant's shall stand struck out.

Thereafter, all Defendants were given further 14 days to file their Response subject to a further Unless Order for payment of additional costs of \$2000.00 and for the pleadings of the defaulting party to stand struck out.

Matter was next called on 25/06/2025 to check on compliances. On this date it was revealed that the 1st, 2nd and 5th Defendants have changed Counsel and has instructed Ms. Ali A. to represent them but a Notice of Change of Solicitors was yet to be filed. Cost order was not complied with and the Court granted time till close of business on the same day to comply with the Court order. Counsel who was previously representing the 1st, 2nd and 5th Defendants were then accordingly allowed to withdraw as Counsel for the 1st, 2nd and 5th Defendants.

By this date too, the 1st, 2nd and 5th Defendant's had failed to comply with the previous Orders of the Court, in breach of the Unless Orders of the Court and a Response to the Summons for Summary Judgment had not been filed on behalf of the 1st, 2nd and 5th Defendant's.

However, considering the circumstances that the 1st, 2nd and 5th Defendant's had by then instructed a new solicitor, Court granted 14 days for the 1st, 2nd and 5th Defendants to duly appoint their new Counsel and to comply with the Court's previous Orders. Further, as per the Unless Order made on 14/05/2025, the 1st, 2nd

and 5th Defendants were ordered to pay a cost of \$2000.00 by 16/07/2025 and their Response was to be filed by 09/07/2025.

Further, on 25/06/2025, the Court again made an Unless Order to the effect that a party defaulting to comply with the Orders of the Court shall pay a further cost of \$2000.00 and that the pleadings of such parties shall stand struck out.

The matter was then mentioned on 09/09/2025 to check on compliance.

On this day, Ms. Ali A. appearing for the 1st, 2nd and 5th Defendants informed Court, that she was newly appointed to represent the 1st, 2nd and 5th Defendant's and that she was unable to do a file search, despite requesting to do so from the Registry. As such, she claimed, she was not able to attend to the previous orders of the Court.

Accordingly, on 09/09/2025, the Court temporarily suspended the Unless Orders made on 25/06/2025 and allowed further time for the 1st, 2nd and 5th Defendant's to comply with the cost orders as for the previous Unless Order by, 12/09/2025. This order was subject to a further Unless Order to the effect that if the order for payment of costs was not complied with, the pleadings of the 1st, 2nd and 5th Defendant's shall stand struck out.

Further on 09/09/2025 the Court granted another 14 days for the 1st, 2nd and 5th Defendant's to file their Response to the Summon for Summary Judgment by 23/09/2025. The Court further directed the Senior Court Officer of the Court to make available on the same day the Court file to the 1st, 2nd and 5th Defendant's to do a file search.

The matter is mentioned today after the 09/09/2025 to check on compliance.

Today too, the 1st, 2nd and 5th Defendants have failed to comply with the Court orders and to file any Response to the Summon for Summary Judgment despite numerous Court orders and several Unless Orders of the Court.

Today too, the excuse given on behalf of the 1st, 2nd and 5th Defendants is that they have retained a new solicitor and he was given instructions at the last moment. Besides this, the Counsel for the Plaintiff has confirmed that the payment of the costs, as made by the 5th Defendant on 12/09/2025 via a cheque has been dishonored by the bank for want of funds.

The delay orchestrated by the 1st, 2nd and 5th Defendants in this matter spans for almost 10 months from the time of the Summon for Summary Judgment was filed and served.

This delay includes continuous disregard of the Courts orders and breach of peremptory orders of the Court.

The reason as adduced by the Counsel appearing for the 1st, 2nd and 5th Defendants today for non-compliance of the Court orders are clearly unacceptable and evidently unjust.

The 1st, 2nd and 5th Defendants are well aware of the Court orders, including the peremptory orders of the Court, but have opted to disregard the same. It appears the change of Counsel just before every mention date before the Court to check on compliance has been employed as a clear delaying tactic and makes the intension of the 1st, 2nd and 5th Defendant's highly doubtful as to their genuinity.

Orders of the Court are meant to be complied with and not meant to be abused to the advantage of a party, to create unacceptable and contumelious delay in the proceedings.

In the overall circumstances of this matter, having carefully considered the conduct of the 1st, 2nd and 5th Defendants, it is the conclusive finding of the Court that the 1st, 2nd and 5th Defendants in this matter are both dishonest and contumelious in their conduct. This conduct is completely unjust in the overall circumstances of the matter.

I therefore find the request for a further adjournment by the Counsel for the 1st, 2nd and 5th Defendants is unreasonable and without merit. Granting of any adjournment is not a right of a party but is for the discretion of the Court. This discretion needs to be judiciously exercised.

I do not find any justification and/or reasonableness in the current request for an adjournment to comply with the Court's previous orders as made against the 1st, 2nd and 5th Defendants.

Counsel for the Plaintiff has brought the Ruling of this Court in *HBC 144/18, Mohammed Binsad v. Mohammed Intaz and Others (27 March 2025)*, to the Court's attention. I have considered the same and find no reason in this matter to differ from my analysis and findings on law in that matter, on granting an adjournment.

Accordingly it is my considered view that, I have no valid or just reason before me, to suspend the operation of the Unless Order made on 09/09/2025 and to grant a further adjournment to the 1st, 2nd and 5th Defendants.

Orders:

1. Pursuant to the Unless Orders made by this Court on 09/09/2025 and as per the Unless Order made on 25/06/2025, pleadings of the 1st, 2nd and 5th Defendants shall stand struck out and dismissed forthwith.
2. Costs of \$2000.00 is ordered against the 1st, 2nd and 5th Defendant's today, as summarily assessed by the Court, payable to the Plaintiff as wasted costs of these proceedings.
3. Accordingly the following costs orders shall be payable by the 1st, 2nd and 5th Defendants to the Plaintiff.
 - i.) Costs of \$2000.00 as per order no. 01 of the further orders of the Court made on 25/06/2025.
 - ii.) Costs of \$2000.00 as per the Unless Order made on 25/06/2025 and was suspended on 09/09/2025 pursuant to order no. 3 therein.
 - iii.) Costs of \$2000.00 as summarily assessed and ordered by the court today, as wasted costs of these proceedings.
4. Plaintiff shall be at liberty to take due steps against the 1st, 2nd and 5th Defendants to enter judgment for default of pleadings pursuant to the rules of the Court.
5. Subject to above order number 4, the Summons for Summary Judgment as filed by the plaintiff on 31/ 01/ 25 is struck out and dismissed as against the 1st, 2nd and 5th Defendants.

Signed

L. K. Wickramasekara

Currently Pending Applications

1. Application for Summary Judgment against the 3rd and 4th Defendants
2. Application to Strike Out of the Counter Claim of the 3rd Defendant.
3. Application to Strike Out the Writ and the Statement of Claim against the 3rd Defendant, as filed by the 3rd Defendant.

4th Defendant has filed and served written submissions. Plaintiff and 3rd Defendant seek time to file written submission on all pending applications together.

Accordingly, the written submissions already filed by Plaintiff on 16/10/2025 and by the 3rd Defendant on 16/10/2025 are to be expunged from the record and to be released back to the respective parties.

Further Orders

1. 21 days for both parties to file and serve written submissions on all pending applications simultaneously - 07/11/2025.
2. Written submissions filed by the Plaintiff and the 3rd Defendant on 16/10/2025 are hereby struck out and expunged from the Record. Registry shall release the said written submission back to the respective parties.
3. Mention on; 11/12/2025 to check on written submissions and to fix for Hearing.

Mr. K. Wickramasekara
Acting Master of the High Court

CIVIL ACTION NO. HBC 236 of 2024

AIR PACIFIC LIMITED

Plaintiff

V

WABS PACIFIC PTE LTD & ORS

Defendants

EX - TEMPORE RULING

Typed and Prepare by:



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Jijiana Gavidi [Ms.]
Secretary

Checked with original and
certified to be true copy:



.....
Meli N Vakacegu [Mr.]
Senior Court Officer
High Court, Suva



Date: 20/10/2025