

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

CIVIL ACTION NO. HBC 61 OF 2021

BETWEEN : **CEE CEE VEE PTE LIMITED** a limited liability company
having its registered office at Ba, Fiji.

PLAINTIFF

AND : **BW HOLDINGS PTE LIMITED** a limited liability company
having its registered office at Suva, Fiji.

DEFENDANT

Before : Master P. Prasad
Counsels : Ms. A. Chand for Plaintiff
Mr. A. Sudhakar for Defendant

RULING

(Strike out)

1. The Plaintiff brings this action for an alleged breach of a development contract by the Defendant. The Plaintiff in its Statement of Claim (**SOC**) seeks damages, interest, an injunction restraining the Defendant from proceeding with a winding up action against the Plaintiff and costs.
2. At discovery stage after both parties had filed their respective Affidavits Verifying List of Documents, the Defendant filed a Summons pursuant to Order 18 Rule 18 of the High Court Rules 1988 (**HCR**) to strike out the Plaintiff's Reply to Statement of Defence (**Reply to SOD**).
3. The Defendant filed an Affidavit in Support of one Gul Mukthar Ali, Branch Manager, Director and Shareholder of the Defendant company. The said Affidavit states that the Plaintiff's Reply to SOD raises new issues and/or evidence in paragraphs 2, 3, 4 and 6. The Defendant asserts that it would be unable to respond to the new allegations and as such the Plaintiff's Reply to SOD is scandalous, frivolous, vexatious and an abuse of court process.
4. The Plaintiff filed an Affidavit in Opposition of Chandar Sen, Managing Director of the Plaintiff company. The said Affidavit states that the Defendant's Statement of Defence (**SOD**) had raised certain issues, and the Plaintiff has in its Reply to SOD only responded to those issues and provided particulars.

5. Both the parties filed brief written submissions and made oral submissions as well. Thereafter, both parties were given time to file supplementary submissions but neither party endeavoured to file any.

Preliminary Issue

6. The Plaintiff's counsel raised a preliminary issue at the hearing of the Summons that the said Summons was made pursuant to Order 18 Rule 18 of the HCR and does not specify which sub-rule the Defendant relies on under Rule 18.
7. The Plaintiff's counsel submitted that because of this omission, the Summons is defective and relied on **Ram Pratab v Malili Nayagodamu Raibe** Supreme Court (Lautoka) Action No. 414 of 1985 (08 May 1987). She also relied on Footnote 18/19/2 of the 1989 Supreme Court Practice which states:

"The application should specify precisely what order is being sought, e.g., to strike out or to stay or dismiss the action or to enter judgment, and precisely what is being attacked whether the whole pleading or indorsement or only parts thereof and if so the alleged offending parts should be clearly specified ...a party seeking to strike out part of a pleading must indicate precisely what he wants struck out."

8. The Plaintiff's counsel further stated that she is unable to ascertain whether the Defendant's grounds of strike out were abuse of process, scandalous pleadings or no reasonable cause of action.
9. In particular, the Plaintiff's counsel relied on the following paragraph from **Pratab** [supra]:

*"There is also the objection that the application does not specifically state what part of the defence is to be struck out and as I have pointed out there are no grounds for striking out that part of the defence that disputes the agreement to pay 13.5% interest. ...
It may well be that there is little merit in the defence, but the delay by the plaintiff in making this application cannot be condoned, and the defective way in which the application has been made are against him. In the event the application will be dismissed."*

10. The Defendant's counsel argued that in this matter, the Defendant has provided all the necessary details identifying all the paragraphs of the Reply to SOD which they had issues with and were applying to be struck out.
11. The Defendant's Summons made pursuant to Order 18 Rule 18 of the HCR states as follows:

"[T]he Plaintiff's Reply to Statement of Defence be struck out with costs on an indemnity basis and any other reliefs that this Court may

deem just and equitable in the circumstance on the following grounds:

1. *That the Plaintiff is attempting to raise new issues and/or evidence in the Reply to Statement of Defence which is contrary to the rules of the law; and/or wrong at law: and/or*
2. *That the Defendant will not be able to respond to the allegations made by the Plaintiff and as such there will not be a fair trial: and/or*
3. *That the Plaintiff had abused the process of the Court: and/or*
4. *That the Plaintiff had caused prejudice to the Defendant.”*

12. Although the Summons is made pursuant to Order 18 Rule 18 without specifying any sub-rule, the said Summons states that the Defendant is relying on the grounds that the Plaintiff has raised new issues and/or evidence in its Reply to SOD, and that it is an abuse of the process of the Court. Furthermore, in the Affidavit in Support, the Defendant has listed the specific paragraphs of the Reply to SOD which it has issues with.

13. Therefore, I find that the Summons is not defective. I will now consider the grounds raised by the Defendant.

Order 18 Rule 18

14. The clear and unambiguous wording of Order 18 Rule 18 indicates that the power to strike out pleadings is discretionary rather than obligatory. Order 18 rule 18 provides:

“18 (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that –

- (a) it discloses no reasonable case of action or defence, as the case may be;*
- (b) it is scandalous, frivolous or vexatious;*
- (c) it may prejudice, embarrass or delay the fair trial of the action; or*
- (d) it is otherwise an abuse of the process of the Court,*

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”

15. The legal principles regarding striking out pleadings are clear and widely understood. The Court of Appeal in **National MBF Finance v Buli** [2000] FJCA 28 determined the principles for strike out. In **Attorney-General v Shiu Prasad Halka** 18 FLR 210 at 214 Justice Gould V.P. in his judgment expressed *“that the summary procedure under O.18, r.19 is to be sparingly used and is not appropriate to cases involving difficult and complicated questions of law.”*

16. The following excerpts from the 1997 Supreme Court Practice provide the scope of the rule together with guiding factors when dealing with an application for the strike out of a pleading.

17. Footnote 18/19/3 of the 1997 Supreme Court Practice reads:

“Striking out or amendment—The rule also empowers the Court to amend any pleading or indorsement or any matter therein. If a statement of claim does not disclose a cause of action relied on, an opportunity to amend may be given, though the formulation of the amendment is not before the Court (CBS Songs Ltd v. Amstrad [1987] R.P.C. 417 and [1987] R.P.C. 429). But unless there is reason to suppose that the case can be improved by amendment, leave will not be given (Hubbuck v. Wilkinson [1899] 1 Q.B. 86, p.94, C.A.). Where the statement of claim presented discloses no cause of action because some material averment has been omitted, the Court, while striking out the pleading, will not dismiss the action, but give the plaintiff leave to amend (see “Amendment,” para. 18/12/22), unless the Court is satisfied that no amendment will cure the defect (Republic of Peru v. Peruvian Guano Co. (1887) 36 Ch.D. 489).”

18. Footnote 18/19/7 of the 1997 Supreme Court Practice reads:

“Exercise of powers under this rule—It is only in plain and obvious cases that recourse 18/19/7 should be had to the summary process under this rule, per Lindley M.R. in Hubbuck v. Wilkinson [1899] 1 Q.B. 86, p.91 (Mayor, etc., of the City of London v. Horner (1914) 111 L.T. 512, C.A.). See also Kemsley v. Foot [1951] 2 K.B. 34; [1951] 1 All E.R. 331, C.A., affirmed [1952] A.C. 345, H.L. It cannot be exercised by a minute and protracted examination of the documents and facts of the case, in order to see whether the plaintiff really has a cause of action (Wenlock v. Moloney [1965] 1 W.L.R. 1238; [1965] 2 All E.R. 871, C.A.).”

19. In this matter the Defendant raises issues with paragraphs 2, 3, 4 and 6 of the Reply to SOD as follows:

- a) The Reply to SOD has pleaded evidence such as names and not facts.
- b) New particulars are pleaded in the Reply to SOD rather than in the SOC, which the Defendant now has no opportunity to respond to.

20. The Defendant’s counsel argued that the SOC, which alleges a breach of contract, fails to specify the particulars of the breach, and these details only appear in the Reply to SOD. Counsel relied on **De La Mare v Doran** HBC01.2014L (11 April 2025) where Justice Dalituicama J at paragraph [25] stated as follows:

“...The correct stage of pleadings to state these “Particulars” is at the Amended Statement of Claim stage, for it will then allow the Defendants fairness to respond to it accordingly in their Amended Statement of Defence. To allow these “Particulars” at Reply to Amended Statement of Defence stage without affording the Defendants their right to fairly respond to it may prejudice, embarrass or delay the fair trial of this case pursuant to Order 18 (1) (c) High Court Rules.”

21. As stated above, the Plaintiff' counsel submitted in rebuttal that the contested paragraphs in its Reply to SOD merely furnish particulars in direct response to the issues expressly raised by the Defendant in its SOD, and as such the Plaintiff is not raising any new issues.
22. While the Plaintiff has given particulars of the issues raised in the SOD, those particulars should have been provided in the SOC in the first instance to enable the Defendant to respond to the same in its SOD. After the pleadings close, the Defendant does not have an opportunity to address the same.
23. The Plaintiff's claim is one of alleged breach of contract and it is only proper that all the particulars are provided in the SOC from the outset.
24. In light of the above, I find that is a proper case to strike out the Reply to SOD and allow the Plaintiff time to amend its pleadings so as to expressly include the additional particulars that were set out in the Reply to SOD in its Amended Statement of Claim.
25. Furthermore, both parties are hereby directed to strictly adhere to the rules of pleadings, especially those set out in Order 18 Rule 6, in filing any and all subsequent pleadings in this matter.
26. Accordingly, I make the following orders:
- (a) The Plaintiff's Reply to Statement of Defence filed on 30 September 2021 is hereby struck out;
 - (b) Plaintiff to file Amended Statement of Claim within 21 days from today (by 19 December 2025);
 - (c) 21 days thereafter for the Defendant to file Statement of Defence to Amended Statement of Claim;
 - (d) The Defendant is entitled to costs summarily assessed in the amount of \$2,000.00 to be paid by the Plaintiff within 1 month from today;
 - (e) Matter will be called for mention on 04 February 2026 to check on compliance of orders (b), (c) and (d) above.



P. Prasad
Master of the High Court

At Lautoka
28 November 2025

