

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No: HBC 341 of 2011

BETWEEN: **ALSPEC HOLDING LIMITED**

PLAINTIFF

A N D: **MINISTRY OF WORKS, TRANSPORT
AND PUBLIC UTILITIES**

1ST DEFENDANT

A N D: **ATTORNEY-GENERAL OF FIJI**

2ND DEFENDANT

Before: Master Thushara Rajasinghe

Counsel: Mr. O'Driscoll for the Plaintiff
 Mr. Chand for 1st and 2nd Defendants

Date of Hearing: 24th September 2014

Date of Ruling: 30th January 2015

RULING

1. This Summons was filed by the Plaintiff pursuant to Order 20 rule 5 of the High Court Rules seeking leave to file and serve an amended statement of claim. This summons was supported by the affidavit of Anul Narayan who is the former director of the Plaintiff Company.
2. Mr. Narayan in his affidavit deposed that their former solicitors did not properly advise them about the claim they put in the statement of claim. Subsequently they have changed the solicitors and found the figures claimed in the statement are not the correct reflection of the actual dispute of the parties. Mr. Narayan stated that the amendment they seek is only to change and increase the figures in the claim and not any other averment.

3. Upon being served with this Summons, the Defendants filed an affidavit of Ajay Singh in opposition to this application. Mr. Singh in his affidavit deposed that the Plaintiff has failed to provide better and further particulars relating to the increase in the amount initially claimed in the statement of claim. Mr. Singh further claimed that the amendment sought is in contravention to Order 18 rule 6 and 14(1) as the draft amended statement of claim does not provide material facts regarding the relief sought.
4. Subsequent to the filing of respective affidavits of the parties, this Summons was set down for hearing on 24th of September 2014. The counsel for the Plaintiff and the Defendant made their respective oral arguments and submissions during the course of the hearing. The learned counsel for the Defendant then filed his written submissions together with the copies of case authorities. Having carefully considered the respective affidavits, oral arguments and submissions, I now proceed to pronounce my ruling as follows.

A. THE LAW.

5. Order 20 rules 5 (1) of the High Court Rules has given the court a discretionary power to allow the Plaintiff or any other party to the proceedings to amend their pleadings at any stage of proceedings on such terms as to cost or otherwise as may be just and in such manner as it may direct. Order 20 rules 5 (1) states that;

“Subject to Order 15, rules 6, 8 and 9 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct”.

6. Lord Keith of Kinkel in **Kettman and others v Hansel Properties Ltd** (1988) 1 All ER 38 has discussed the principles of amendment of pleading in an inclusive manner, where His Lordship has observed that

“whether or not a proposed amendment should be allowed is a matter within the discretion of the judge dealing with the application, but the discretion is one that falls to be exercised in accordance with well-settled principles. In his interlocutory judgment of 10 December 1982, allowing the proposed amendment, Judge Hayman set out and quoted at some length from the classical authorities on this topic. The rule is that amendment should be allowed if necessary to enable the true issues in controversy between the parties to be resolved, and if allowance would not result in injustice to the other party not capable of being compensated by an award of costs. In Clarapade & Co v Commercial Union (1883) 32 WR 262 a 263 Brett MR said;

The rule of conduct of the court in such a case is that, however negligent or careless may have been the first omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by cost; but if the amendment will put them into such a position that they must be injured it ought not to be made”.

7. Having discussed the principles of amendment of pleadings, Lord Keith further elaborated the test of injury to the other side, where His Lordship found that;

“the sort of injury which is here in contemplation is something which places the other party in a worse position from the point of view of presentation of his case that he would have been in if his opponent had pleaded the subject matter of the proposed amendment at proper time. If he would suffer no prejudice from the point of view, then an award of cost is sufficient to prevent him from suffering injury and the amendment should be allowed. It is not a relevant type of prejudice that allowance of the amendment will or may deprive him of a success which he would achieve if the amendment were not to be allowed”.

8. In **Reddy Construction Company Ltd v Pacific Gas Company Ltd** (1980) FJCA 9; (1980) 26 FLR 121(27 June 1980), the Fiji Court of Appeal has discussed the legal principles of amendment of pleadings, where the Fiji Court of Appeal observed that;

“the primary rule is that leave may be granted at any time to amend on terms if it can be done without injustice to the other side. The general practice to be gleaned from reported cases is to allow an amendment so that the real issue may be tried, no matter that the initial steps may have failed to delineate matters. Litigation should not only be conclusive once commenced, but it should deal with the whole contest between the parties, even if it takes some time and some amendment for the crux of the matter to be distilled. The proviso, however that amendment will not be allowed which will work an injustice is also always looked at with care. So in many reported cases we see refusal to amend at a late stage particularly where a defence has been developed and it would be unfair to allow a ground to be changed”.

9. Justice Pathik in **Fiji Electrical Authority v Suva City Council** (1994) FJHC2; HBC0901d.84s (5 August 1994) in determining an application made under Order 20 r 7 for amendment of other documents, which is also founded on the same legal principles as of this application, held that

“the guiding principle of cardinal importance, namely, that all such amendment ought to be made for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings”.

10. It appears from the above discussed judicial precedents, that the judicial approach in exercising its discretionary power on the issue of amendment of pleadings is founded on a wider liberal approach in facilitating the parties to bring the real issues in controversy. It is the onus of the party, who seeks an amendment, to satisfy the court that the propose amendment is within the actual controversy between the parties and essential to the determination of it. As Lord Keith held in **Ketteman and others v**

Hansel Properties Ltd (supra) the test of injustice to the other party is that to consider whether they are in a worse position in respect of presenting their case than they would have been in if their opponent had pleaded the proposed amendment at the proper time.

11. I now turn my attention to this instance case. This summons for amend the claim is mainly founded on the ground that the Plaintiff wants to change and increase the figures stated in the claim and nothing else. All other particulars pertaining to the claim remain as before. On the other hand, the Defendant main objection is founded on the ground that the Plaintiff failed to provide better and further particulars for the change of figures, which I find has no merit since the original claim has provided particulars for the figures stated therein.
12. Moreover, it appears that the Defendants have not claimed any form of injuries or prejudice if the amendments sought are allowed. I accordingly find that the amendment sought by the Plaintiff could assist the court to determine the actual dispute between the party and that will not cause any prejudice to the Defendants. I accordingly make following orders that ;
 - i. The Plaintiff is granted leave to amend the statement of claim as pleaded in the Summons dated 6th of June 2014,
 - ii. The Plaintiff is ordered to file and serve its amended statement of claim within 7 days of this order,
 - iii. The Defendant is awarded sum of \$750 as for the cost of this application, assessed summarily,

Dated at Suva this 30th day of January, 2015


R.D.R Thushara Rajasinghe
Master of High Court, Suva