

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

CIVIL ACTION NO.: HBC 09 of 2017

BETWEEN : TOTAL FIJI LIMITED
PLAINTIFF

AND : CORNER POINT FIJI LTD
DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr R. Singh with Mr S Fatiaki [Sherani & Co]

DEFENDANT : Ms A Swamy [Messrs Patel & Sharma]

RULING OF : Acting Master Ms Vandhana Lal

DELIVERED ON : 30 March 2020

INTERLOCUTORY RULING

[Amendment of Pleading]

1. This is the Defendant's application dated 19th July 2017 seeking orders for leave to be granted for it to amend the statement of defence and counterclaim.

The said application is made pursuant to Order 20 rule 5 of the High Court Rules and is supported by an affidavit of one Shiu Ram sworn on 17th July 2017.

2. The Plaintiff filed its Affidavit on 1st November 2017 with a reply filed by the Defendant on 14th November 2017.

3. According to the Defendant, the Plaintiff has on 23rd January 2017 lodged a caveat being caveat number 838305 against the property comprised in crown lease number 178425 being land owned by the Defendant.

The Plaintiff is said to have no caveatable interest in the said land.

The Defendant was in process of selling the land however due to the caveat in place the Defendant has been restrained from dealing with their property.

The Plaintiff obtained an ex-parte order on 15th March 2017. Due to this the Defendant is said to have suffered loss and damage.

The Defendant now wishes to amend its statement of defence to incorporate a counterclaim directly following from the wrongful lodgement of the caveat.

The parties had not entered into a proper lease agreement.

The new proposed terms did not in any way restrain the Defendant from dealing with the land.

4. According to the Plaintiff, the caveat dated 23rd January 2017 was lodged to protect the Plaintiff's treatment of loss.

The Plaintiff held a caveatable interest by virtue of lease agreement dated 6th November 2009.

The caveat was lodged to protect the Plaintiff's interest as lessee by virtue of the lease agreement.

When the Plaintiff was advised that the Defendant was selling the property to Tappoo Limited subject to the Plaintiff's continued occupation as lessee, the Plaintiff agreed with

the Defendant that the Plaintiff will not seek further extension of the caveats and will allow the sale to Tappoo Limited to go through.

The Defendant was aware of the caveat when it filed its statement of defence in 2017 but at that stage deliberately did not include the counter-claim.

The Defendant is now acting in bad faith to include a counterclaim in relation to the caveat after it obtained the agreement of the Plaintiff not to seek an extension of the caveat to allow the sale of the property.

5. Order 20 rule (5) pursuant to which the said application is made reads:

- (1) *Subject to order 15, rule 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 or her writ, or any party to amend his or her pleadings, on such terms as to costs or otherwise may be just and in such manner (if any) as it may direct.*
- (2)
- (3)
- (4) *An amendment to alter the capacity in which a party sues may be allowed under paragraph (2) if the new capacity is one which that party had at the date of the commencement of the proceedings or has since acquired.*
- (5) *An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.*

6. There is no dispute that the Plaintiff had lodged a caveat against crown lease No 17842. This was registered on 17 January 2017. It had received a notice of removal from the registrar of title dated 1st March 2017. The removal was applied by the Defendant.

The Plaintiff then applied for extension of the caveat. The Court on 15th March 2017 granted temporary extension.

The plaintiff on 12th April 2017 withdrew its application for extension of the caveat.

7. **Section 114** of the **Land Transfer Act** allows “*any person who may have sustained damage due to any caveat lodged without reasonable cause to be compensated*”.

8. Goudie J. in **Fiji Electricity Authority v Balram and Others [1972] 18 FLR 20** at p21 quoted Brett M.R in **Clarapede V. Commercial Union Association 32 W.R.** page 263 who stated:

“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.”

9. Considering that the Plaintiff had in this matter applied for extension of caveat it is only prudent that the Defendant be allowed the amendment to claim for compensation under **section 114** of the **Land Transfer Act**.

10. I do not find any prejudice caused to the Plaintiff as the matter is still at the pre-trial stage.

FINAL ORDER

11. On the Defendant’s application dated 19th July 2017, I grant the Defendant leave to amend the statement of defence and counterclaim in the format as annexed to the affidavit in support;
12. Cost of this application to be in cause;

13. Amended pleading to be filed/served on the Plaintiff's solicitors on or before 4pm 09th April 2020;
14. The Plaintiff thereafter to file/serve its reply to amended statement of defence and defence to counterclaim 14 days thereafter;
15. The Defendant to file/serve reply to defence to counterclaim in 7 days thereafter.



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Vandhana Lal [Ms]
Acting Master
At Suva.