

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

CIVIL CASE NO: HBC 140 OF 2019 LTK

BETWEEN: **PAUL PHILLIPS** of 1 Coconut drive, Sonaisali **PLAINTIFF**
Nadi, Company Director.

A N D: **RENDEZVOUS BEACH RESORT LIMITED** **1ST DEFENDANT**
a company incorporated in Fiji and having its
registered office at Level 1, Sigatoka Club, Sigatoka Town.

A N D: **SALTWATER SPORTS COMPANY LIMITED** **2ND DEFENDANT**
a company incorporated in Fiji and having its
registered office at Lot 1 Nalovi, Nadi Town.

A N D: **FIRST DIVERS LIMITED** a company incorporated **3RD DEFENDANT**
in Fiji and having its registered office at Level 1,
Sigatoka Club, Sigatoka Town.

A N D: **RATOGO HOLDINGS LIMITED** a company **4th DEFENDANT**
incorporated in Fiji and having its
registered office in Suva.

A N D: **I TAUKEI LAND TRUST BOARD** a statutory **5th DEFENDANT**
Body duly constituted under the I Taukei Land
Trust Act [cap 134] and having its office at
431 Victoria Parade, Suva.

A N D: **BENJAMIN SEDUADUA** of Nadi, Company Director **6th DEFENDANT**

A N D: **THE DIRECTOR OF LANDS** **7TH DEFENDANT**

A N D: **THE ATTORNEY GENERAL OF FIJI** **8TH DEFENDANT**

A N D: **SAGACITY INVESTMENT PTE LTD** **9TH DEFENDANT**

Counsel: Ms. S. Saheb for the Plaintiff
Mr. I. Ramanu for 1st, 2nd, 3rd, 4th and 6th Defendants
Ms. G Nauwakarawa for 5th Defendant
Mr. J. Chand for 7th and 8th Defendants
Ms. M. Muir for 9th Defendant

Date of Hearing: 21st July 2025

Date of Judgment: 28th August 2025

RULING

1. The Ninth Defendant, on 22nd April 2025, filed this Inter-Parte Summons pursuant to Order 20 Rule 5 (1) and Order 24 of the High Court Rules, as well as the inherent jurisdiction of this Court, seeking an order granting leave for the ninth Defendant to amend its statement of defence and to introduce counterclaims against the Plaintiff and the first to sixth Defendants. Additionally, an order for discovery is sought, granting leave for the ninth Defendant to file an affidavit verifying the list of documents, as well as an order for the service of the affidavit verifying the list of documents of the other parties on the ninth Defendant.
2. The Inter-Parte Summons was supported by an affidavit from Ms. Seini Tinaikoro, a solicitor employed by the lawyers of the ninth Defendant, outlining the factual background of the application. The Plaintiff, along with the first to fourth Defendants and the sixth Defendant, objected to this Summons and filed their respective affidavits in opposition, detailing their objections. The ninth Defendant then submitted its affidavit in reply.
3. During the hearing of this matter, the Counsel for the fifth, seventh, and eighth Defendants informed the Court that they have no objection to this summons. The Court heard the oral submissions of the Counsel for the ninth Defendant, the Counsel for the Plaintiff, and the Counsel for the first to fourth and sixth Defendants. In addition to their respective oral submissions, the three Counsel filed their written submissions. Having considered the

respective affidavits, as well as the oral and written submissions, I now pronounce the ruling of this matter.

4. I do not wish to outline the factual background of this matter in *extenso* but will state the brief summary insofar as relevant to this application. The Plaintiff issued the writ of summons in 2019, against the first to eighth Defendants, seeking several orders as prayed in the Statement of Claim over a dispute stemming from sales and purchase agreement, he entered into with the first, second, third and fourth Defendants so as to purchase four properties as detailed in the Statement of Claim. The first, second, third and fourth Defendants are the lessees of these four properties, while the sixth Defendant is a Director of the above-mentioned four Defendants' companies.
5. The ninth Defendant, as outlined in their proposed amended statement of defence and counterclaim, entered into three sales and purchase agreements with the first three Defendants for the same properties described in the Statement of Claim, paying the full purchase price with the approval of the fifth Defendant. The ninth Defendant asserts that the first, second, third, sixth, and fifth Defendants did not inform them about these proceedings until they discovered it when the transfer and mortgage documents were lodged for registration at the Registrar of Titles. Consequently, the ninth Defendant's title to the properties has not been registered. Based on this, the ninth Defendant is seeking certain orders and relief as set out in the proposed counterclaims against the Plaintiff, the first to third Defendants, and the fifth and sixth Defendants.
6. Order 20 Rule 5 (1) of the High Court Rules states:

“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 or her writ, or any party to amend his or her pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct”

7. One of the leading “*locus classicus*” on the amendment of pleadings under Order 20 Rule 5 of the High Court is **Reddy Construction Co Ltd v Pacific Gas Co Ltd [1980] FJCA 15;**

Civil Appeal 47 of 1979 (27 June 1980), where the Fiji Court of Appeal adopted a liberal approach that amendments should be permitted at any stage if they can be made without causing injustice and if any prejudice can be compensated through costs. The Fiji Court of Appeal set forth that:

“The primary rule is that leave may be granted at any time to amend on terms if it can be done with-out 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 amendments 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”

8. The Learned authors of the Supreme Court Practice 1999, volume 1, p. 379, outlined the general principles considered when granting leave to amend, where it states:

“General principles for grant of leave to amend (rr. 5, 7 and 8)—It is a guiding principle of cardinal importance on the question of amendment that, generally speaking, all such amendments 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.” (see, per Jenkins L.J in G. L. Baker Ltd v. Medway Building & Supplies Ltd [1958] 1 W. L. R. 1216 at 1231; [1958] 3 All E. R. 540 at 546).

“It is a well established principle that the object of the Court is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights.... I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without

injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or grace... It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected if it can be done without injustice, as anything else in the case is a matter of right.” (per Bowen L.J. in Cropper v Smith (1883) 26 Ch.D. 700 at 710-711, with which observation A. L. Smith L.J., expressed “emphatic agreement” in Shoe Machinery Co. v. Cultam [1896] 1 Ch. 108 at 112).

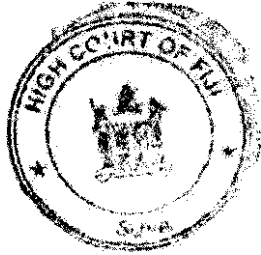
9. Two main factors must be considered when exercising the discretion to grant an amendment under O 25 R 5 of the High Court; *viz*, whether the amendment would enable the ninth Defendant to fully and accurately set out the factual basis of its claim, so as to determine the true dispute between the parties, and whether the amendment can be granted without causing injustice to the other side. Any prejudice can typically be mitigated by costs or adjournment.
10. Having considered the reasons outlined by the ninth Defendant for the delay in making this application, it is difficult to comprehend how those reasons can be regarded as reasonable. The ninth Defendant was not prevented from making an appropriate application to the Court if they were not served with the pleadings of the other parties, nor from contacting the Counsel representing the other parties to request copies of the pleadings. However, as outlined by Bowen LJ in **Cropper v Smith (1883) 26 ChD 700**, the fundamental purpose of the Court is to decide the rights of the parties rather than punish them for mistakes or a lackluster approach in advancing the matter, by denying them the opportunity to present their dispute fully if necessary.
11. The resolution of the dispute between the Plaintiff and the other Defendants undoubtedly affects the interests and rights of the ninth Defendant in the properties that are the central plank of the controversy. Therefore, a complete and accurate understanding of the ninth Defendant's interests and rights, including the claims they have against the Plaintiff and the other Defendants, is a vital part of determining the true issue in contention between the parties.

12. Considering the reasons outlined above, it is my considered opinion that the difficulties and any prejudices caused by granting this application to amend the statement of the defence and to advance the counterclaim could be appropriately compensated by awarding sufficient costs to the affected parties.

13. Accordingly, I make the following orders:

- a) The inter-parte summons filed by the ninth Defendant on the 22nd of April 2025 is allowed.
- b) The ninth Defendant is granted leave to file the amended statement of defence and counterclaim within 14 days of this order.
- c) The Plaintiff is ordered to file his reply to the ninth Defendant's statement of defence and defence to the counterclaim 14 days thereafter. The first to sixth Defendants are ordered to file their defence to the counterclaim within the same 14 days period.
- d) The ninth Defendant is ordered to file the reply to the defence to the counterclaim 14 days thereafter.
- e) The ninth Defendant is ordered to file and serve an affidavit verifying the list of documents 14 days thereafter. Additionally, the Plaintiff and the other Defendant are ordered to serve the ninth Defendant with each party's affidavits verifying the list of documents within the same 14-day period.
- f) The ninth Defendant shall pay a cost of \$1000 to the Plaintiff, as summarily assessed by the court as the costs of this application within 14 days of this ruling.

- g) The ninth Defendant shall pay a cost of \$1000 to the first, second, third, and sixth Defendants, as summarily assessed by the Court as the costs of this application within 14 days of this ruling.



A handwritten signature in black ink, appearing to be "R. D. R. T. Rajasinghe".

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Hon. Mr. Justice R. D. R. T. Rajasinghe

At Suva

28th August 2025

Solicitors

Parshotam Lawyers for Plaintiff

MIQ lawyers for 1st, 2nd, 3rd, 4th and 6th Defendants.

ITLTB for 5th Defendant.

Attorney General's office for 7th & 8th Defendants.

Siwatibau & Sloan for 9th Defendant.