

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

Civil Action No. **HBC 356 of 2019**  
Civil Action No. **HBC 289 of 2019**

**Between** : **W. R CARPENTER (SOUTH PACIFIC) PTE LIMITED** a limited liability company having its registered office at Carpenters Building, 34 Rodwell Road, Suva.

**First Plaintiff**

: **CARPENTERS FIJI PTE LIMITED** a limited liability company having its registered office at 34 Rodwell Road, Suva.

**Second Plaintiff**

: **PROPERTIES TRUST (FIJI) PTE LIMITED** a limited liability company having its registered office at 34 Rodwell Road, Suva.

**Third Plaintiff**

**And** : **NEW INDIA ASSURANCE COMPANY PTE LIMITED** a body corporate duly registered under the Insurance Act with

**Defendant**

**Representation:**

**Plaintiff:** Mr. M. F Khalim (Patel Sharma Lawyers)

**Defendant:** Mr. F. Y Haniff (Haniff Tuitoga)

**Date of Hearing:** 9<sup>th</sup> December 2025.

**Ruling**

**A. Introduction**

[1] There are two applications by the Plaintiffs seeking leave to amend the Statement of Claim in **HBC 289 of 2019** and **HBC 356 of 2019** pursuant to Order 20 rule 5 of the High Court Rules 1988 and the inherent jurisdiction of the Court.

[2] The applications arise in circumstances where the Defendant has already been granted leave to amend its Statement of Defence, following which further discovery was made, including disclosure of insurance policies and schedules previously unavailable to the Plaintiffs.

[3] The Defendant opposes only parts of the proposed amendments, primarily those introducing or particularising claims for business interruption, demolition costs, fines, penalties, and claim preparation costs. The Defendant contends that these aspects are statute-barred and constitute new claims after the expiry of the limitation period. These objections were made orally.

**B. Background**

[4] The original Statements of Claim were filed in 2019 and pleaded claims arising from loss said to have been caused by an insured event.

[5] In July 2024, the Defendant was granted leave to amend its Statement of Defence. Following that amendment, further discovery was made in August 2024, including disclosure of insurance policy documents and schedules that had not previously been available to the Plaintiffs.

[6] The Plaintiffs contend that the amendments now sought are a direct consequence of that discovery and are necessary to properly plead the nature and extent of the losses said to arise under the policy.

**C. The Issues**

[7] Whether the proposed amendments introduce a new cause of action after expiry of the limitation period?

[8] Would the Defendant suffer prejudice of a kind that cannot be adequately compensated by an award of costs?

[9] Whether the interests of justice favour allowing the amendments in circumstances where two related proceedings are before the Court.

**D. Determination**

[10] The principles governing amendment of pleadings under Order 20 rule 5 are well settled.

[11] The Court has a discretion to permit amendment at any stage of proceedings where this is necessary to determine the real issues in controversy between the parties, subject always to considerations of injustice and prejudice. In **Prasad v Republic of Fiji [2000] FJHC 121; Hbc0217.20001 (15 November 2000)** it was emphasised that that procedural rules must yield to considerations of gravity, justice and access to the courts; that practice and procedure take second place to ensuring justice and the rule of law and that courts should not apply procedural barriers to stifle legitimate litigation.

[12] The primary consideration is whether the amendment is necessary to determine the real issues in controversy between the parties. The long-standing rule of the Court is that amendment should be allowed if necessary to enable the issues in controversy between the parties to be resolved.

[13] We distinguish between an amendment which introduces a new cause of action and one which merely adds or particularises or expands upon loss flowing from an existing cause of action. **Wakaya Ltd v Gilmour [2018] FJHC 938; HBC256.2010 (28 September 2018)** expressly sets out the test for amendment under Order 20 and states the specific rule that an amendment which would add or substitute a new cause of action may nevertheless be allowed if the new cause of action “*arises out of the same facts or substantially the same facts*” as a cause already pleaded.

[14] The question of limitation does not automatically bar amendment. Where limitation is arguable and dependent on factual or legal evaluation, it is ordinarily a matter to be determined at trial. **Singh v All Engineering (Fiji) Ltd [2022] FJHC 531; HBC106.2016 (12 August 2022)** treated limitation as a matter to be determined at trial rather than on an interlocutory application, emphasising that contested limitation issues should not ordinarily be resolved without the benefit of full evidence. That approach accords with settled authority that limitation is generally a defence to be pleaded and proved, rather than a threshold issue determinative of leave to amend.

#### **Introduction of new cause of action**

[15] Having considered the proposed amended pleadings, I do not find that the Plaintiffs are advancing a new cause of action.

[16] The factual substratum of the claims remains unchanged. The amendments arise from the same insured event and the same alleged entitlement under the policy. What is sought is a more complete articulation of the losses said to flow from that event.

[17] The fact that certain heads of loss were not expressly pleaded in the original Statements of Claim does not, without more, convert the amendments into a new cause of action.

#### **Limitation**

[18] The Defendant submits that certain claims are time-barred. That submission raises a substantive defence.

[19] It is neither necessary nor appropriate for the Court, on an interlocutory application of this nature, to finally determine contested limitation issues which may depend upon construction of the policy, the nature of the losses claimed, and the evidence to be adduced at trial.

[20] The Defendant remains at liberty to plead limitation and to pursue that defence at trial.

#### **Pre-judice**

[21] For the Defendant the contention is that it will suffer prejudice if the amendments are allowed. I am not persuaded that the Defendant will suffer prejudice that cannot be addressed by costs or appropriate procedural directions.

[22] The Defendant has already amended its Defence and will have the opportunity to respond to the amended Statement of Claim. No prejudice of an irremediable nature has been demonstrated.

### **Two related proceedings**

[23] Given that two related actions are proceeding in parallel, it is in the interests of justice that the pleadings accurately reflect the real issues in dispute to avoid fragmented adjudication or unnecessary duplication.

### **E. Conclusion**

[24] The amendments sought are directed towards ensuring that the real issues between the parties are identified and determined.

[25] The Defendant's objections based on limitation and recoverability are matters for trial and do not justify refusal of leave at this interlocutory stage.

[26] As such, I am satisfied that the proposed amendments should be allowed.

### **F. Court Orders**

- a. Leave is granted to the Plaintiffs in HBC 289 of 2019 and HBC 356 of 2019 to amend their Statements of Claim. This should be filed within 14 days of this ruling.*
- b. The Defendant shall have liberty to file and serve Amended Statements of Defence, 14 days thereafter from the date of service of the amended statements of claim.*
- c. Costs shall be costs in the cause.*



A handwritten signature in blue ink, appearing to be "Chaitanya S. C. A. Lakshman".

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Hon Justice Chaitanya S. C. A. Lakshman  
Puisne Judge

30<sup>th</sup> January 2026