

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 149 of 2010

BETWEEN : **AYESHA ALI** father's name Rauf Khan and **SHAFIA ALI** father's name Nasir Ali both of 8922 141 A Street, Surrey, B.C. V3V – TT3 597-9749, Canada, Domestic Duties and Student respectively.

Plaintiffs

AND : **LALIN SANJEETA LAL** father's name Ravend of Cuvu, Sigatoka, Driver.

1st Defendants

AND : **CORAL SUN** a limited liability having its registered office at GH Whiteside & Co. 211 Ratu Sukuna Road, Suva.

2nd Defendant

AND : **SUN INSURANCE COMPANY LIMITED** a limited liability company having its registered office in Suva and carrying on business elsewhere in Fiji.

Third Party

R U L I N G

INTRODUCTION

1. Before me is a Summons For Further And Better Particulars filed by the third party, Sun Insurance Company Limited, against the defendants' reply to the third party's defence and also defence to the third party's counter claim. The application is filed pursuant to Order 18 Rule 11 (3) and Order 26 Rule 1 of the High Court Rules 1988.
2. Order 18 Rule 11(3) provides:

The Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just.
3. Order 26 Rule 1 provides:

(1) A party to any cause or matter may apply to the Court for an order-
(a) giving him leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter, and
(b) requiring that other party to answer the interrogatories on affidavit within such period as may be specified in the order.

PRINCIPLES

4. The principles which guide the courts when considering whether or not to order for further and better particulars are clearly set out in the following extract of Byrne J's ruling in **In the Estate of Harry Janson Ho** [1993] FJHC 48:

The general principle governing the delivery of further and better particulars of any pleading is that the Court will order these if it is considered desirable to elucidate the issues to be tried and prevent "surprise" at the trial.

5. Further and better particulars are often sought when the statement of claim, although disclosing a reasonable cause of action lacks the necessary particulars of allegations of the type set out in Order 18 Rule 11 (1) to (7) or, as Pathik J said in **Prasad v University of the South Pacific** [1998] FJHC 254; [1998] 44 FLR 272 (9 November 1998), when the cause of action "appears to be hidden in a wealth of prolixity and therefore difficult to understand and get at the issues.
6. Particulars will not be ordered where, to require them, would be oppressive or unreasonable.
7. Courts will also refuse to make such orders if the information sought is not in the possession of either party and/or the information could only be obtained through great difficulty.
8. D.B Casson on **Ogders of High Court Pleadings and Practice** 23rd Edition, (Sweet & Maxwell) at page 194 states as follows.

The mere fact that the defendant has already served his defence is no waiver of his right to particulars of the allegations in the statement of claim. And where the pleadings contain sufficient particulars to raise issues which ought to be investigated by the court, neither further particulars nor discovery will be ordered before defence. Accordingly, unless such particulars are necessary in order to enable him to plead, the proper time for his application is upon the first hearing of the Summons for Directions. If he makes a separate application earlier or later, as he may so long as he is not guilty of unreasonable delay, he will probably have to bear the costs, unless there was some very good reason for taking this course.

THE CASE BETWEEN THE PARTIES

9. The plaintiffs' allege in their claim that on 04 August 2007, they suffered personal injuries as a result of a collision between the vehicle they were travelling in (registration number EQ552) and motor vehicle registration number LH277. The said collision allegedly happened because the first

defendant was driving LH277 at an excessive speed and was travelling along the wrong lane. The second defendant is sued vicariously as owner of the said vehicle registration number LH277. The second defendant has joined Sun Insurance Company Limited as third party and seeks indemnity from the said insurer pursuant to a compulsory third party insurance policy number Z469435 over LH277.

10. The gist of the applicant-third party's case is set out in the affidavit of one Elizabeth Yvonne Saverio sworn on 14 November 2014.
11. Ms Saverio annexes to her affidavit marked EYS-1 a letter written by AK Lawyers dated 30 January 2014:

30th January 2014
Our ref: S383/13
Your ref:
Faiz Khan Lawyers
Barristers & Solicitors
P.O. Box 107
LAUTOKA
Dear Sirs

Re: **AYESHA ALI & ANOR –v- CORAL SUN & SUN INSURANCE CO LTD**
LAUTOKA HIGH COURT CIVIL ACTION NO. 149 OF 2010

We refer to the above matter and note the contents of your clients Reply to Defence and Defence to Counter Claim.

Paragraph 1b) of the Defence and Defence to Counter Claim alleges that your client "had informed the 3rd party of the accident immediately after the accident". By way of a request for further and better particulars could you provide the following particulars of the above allegation:-

1. State, (identifying the person and position held), from the 2nd Defendant who informed the 3rd Party of the accident.
2. State the date or dates, if on more than one occasion, on which the 3rd Party was informed of the accident by the 2nd Defendant.
3. State how, specifying whether orally or in writing the 3rd Party was informed of the accident by the 2nd Defendant on each and every occasion stating where, naming the place, such information was given to the 3rd Party.
4. State to which person with the 3rd Party the information of the accident was given by the 2nd Defendant specifying the name of the person and the position held with the 3rd Party who was given such information.
5. State precisely what details or information relating to the accident was provided to the 3rd party.

Please note that your urgent attention is requested. Should the above not be provided within 7 days of the date hereof we propose to move the Court for the particulars and/or for leave to deliver interrogatories.

We trust that in order to obviate the necessity for any application you will comply with the request herein.

Yours faithfully
AK Lawyers

12. The defendant has never bothered to supply to the third party the particulars sought in the above letter and the third party had followed that up with letters sent on 22 April 2014, 25 April 2014, 28 April 2014, 10 June 2014 as well as emails sent in between.

ANALYS

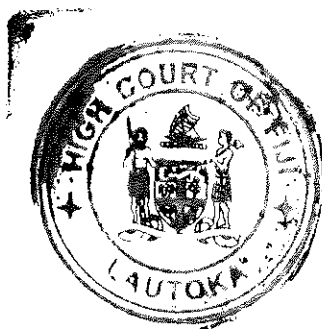
13. In my view, the trial between the defendants and the third party will no doubt centre around this one particular issue – that is:

Whether the defendant did inform the third party of the accident immediately after the accident.

14. Accordingly, I order that the defendant gives further and better particulars of the following in twenty one days:

1. State, (identifying the person and position held), from the 2nd Defendant who informed the 3rd Party of the accident.
2. State the date or dates, if on more than one occasion, on which the 3rd Party was informed of the accident by the 2nd Defendant.
3. State how, specifying whether orally or in writing the 3rd Party was informed of the accident by the 2nd Defendant on each and every occasion stating where, naming the place, such information was given to the 3rd Party.
4. State to which person with the 3rd Party the information of the accident was given by the 2nd Defendant specifying the name of the person and the position held with the 3rd Party who was given such information.
5. State precisely what details or information relating to the accident was provided to the 3rd party.

15. If the defendants fail to comply with the above, then I will consider ordering costs to the third party on the next call over date. Case adjourned to **28 March 2017** for mention at **10.30 a.m.**



Anare Tuilevuka
Judge
LAUTOKA
07 March 2017