

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

CIVIL ACTION NO.: HBC 71 of 2014

**BETWEEN : WATER AUTHORITY OF FIJI
PLAINTIFF**

**AND : TABUA INVESTMENTS LIMITED
DEFENDANT**

**AND : DENARAU CORPORATION LIMITED
FIRST THIRD PARTY**

**: RYLESTONE LIMITED
SECOND THIRD PARTY**

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr. D. Sharma with Mr. S. Deo [R Patel Lawyers]

DEFENDANT : Ms. M. Tikoisuva [Howards Lawyers]

FIRST THIRD PARTY : Mr. V. Sharma [AK Lawyers]

SECOND THIRD PARTY : No Appearance [FNPF Legal Services]

RULING BY : Acting Master Ms Vandhana Lal

DELIVERED ON : 29 July 2022

INTERLOCUTORY RULING

Defendant's Application to Strike out the Plaintiff's Claim

1. The first application for determination is made by Tabua Investments Limited, the Defendant who via its summon dated 22 November 2019 seeks orders to have the Plaintiff's writ of summons and statement of claim filed on 07 March 2014 be dismissed

and wholly struck out on the ground that it discloses no reasonable cause of action or otherwise is frivolous, vexatious and an abuse of the process of the court.

The application is made pursuant to Order 18 Rule 18 (1) of the High Court Rules.

2. The Plaintiff's claim is summarized as follows:

The Plaintiff is the successor to Public Works Department [PWD] and was vested with the responsibilities of PWD once the Water Authority of Fiji Promulgation 2007 became operational.

The Plaintiff is responsible for the supply of water to properties on Denarau Island [the Island] and it charges for the supply of water using meters to assess the said charges on a regular billing cycle.

PWD was previously responsible for water supply infrastructure that ended at the point of a Master Meter [EG I-01] located at the Nadi side of the bridge to the Island.

The Island is a private property which was developed, owned and managed by Tabua Investments Limited [the Defendant] who were also responsible for the subdivision of the Island.

The Defendant had used its own contractors to install pipelines within the Island with the Plaintiff to place a Master Meter at the Bridge in order to account for water charges with the Defendant being responsible to pay for all water charges.

The Defendant took the responsibility of managing the water and sewerage reticulation on the Island and had appointed Blueridge Plumbing to implement and monitor all water and sewerage reticulation on the Island.

The Defendant had imposed condition that PWD could not install or touch any of the pipelines on the Island without the consent and permission of the Defendant or Blueridge Plumbing.

When the Defendant commenced selling lots on the Island it allowed the Plaintiff to install individual meters to ensure separate billing was done for the supply of water.

In 2004 Public Works Department asked the Defendant to assist in identifying all the off takes from the reticulation mains within the Island for future billing to all individual consumers.

The Ministry of Works through its Chief Executive Officer informed the Defendant via a letter of 04 August 2004 that the difference in consumption between the individual metered connections and total consumption recorded by PWD Master Meter located at the Island Bridge would be borne by the Defendant.

PWD would then deduct the charges for the individual meters from the reading at the Master Meter with the balance being billed to the Defendant.

The Defendant agreed by a letter of 09 August 2004 with this.

From 30 November 2011 the Plaintiff noticed a substantial usage of water at its Master Meter.

Between November 2011 to 31 August 2013 the amount had accumulated to \$552,962.35.

The Defendant has denied it is liable to pay the water charges.

The Plaintiff is seeking judgment for \$552,962.35 with pre-judgment interest from 01 September 2013 at 8.5% per annum as well as post judgment interest at 4% per annum together with damages for usage of additional water from 31 August 2013.

3. The Defendant's statement of defence filed on 15 April 2014 can be summarized as follows:

According to the Defendant, PWD was responsible for the supply of water to the Island as a whole and it [the Defendant] has no knowledge of the purpose of the Master Meter [EG I-01].

The Defendant further denies that it developed, owned and managed the Island. However according to them, when they acquired parts of the Island the other parts were owned and developed by Farleigh Limited; Richmond Limited and Rylestone Limited.

At all material times the infrastructure, common facilities and areas on the Island were and are owned (legally and/or beneficially), managed and maintained by Denarau Corporation Limited [DCL].

The Defendant had subdivided parts of the Island which it developed namely the residential, industrial and commercial precincts and some lots within the hotel precinct.

Accordingly, it had installed pipelines within the residential, industrial, commercial precincts and some lots with the hotel precinct which it had developed.

PWD had installed water meters in each of the precincts to enable it to charge for water usage.

All water, sewerage (and electricity) reticulation and supply are administered, managed and controlled by DCL.

The Defendant denies that it had appointed Blueridge Plumbing to implement and monitor water and sewerage reticulation and that PWD could not install or touch any pipelines on the Island without the consent of the Defendant or Blueridge Plumbing.

According to the Defendant the individual owners of the property on the Island are liable for their own water usage and as such PWD was responsible to ensure all property on the island was metered for water usage and the owners were paying for their water usage.

The Defendant admits over a period of time individual properties had metered connections for separate billing. It also had separate water meter connections for which it regularly paid the rates for water supplied.

The PWD undertook an audit of metered connections on the island and had sought the Defendant's assistance to identify the same. According to the Defendant, PWD in exercise of its statutory duty and function ought to have kept records of all such water meters connected on the Island.

The Defendant denies that any concluded agreement was reached on the letter of 04 August 2004 and any reference in the letter to the issuance of "an account for the difference in consumption between the PWD master meter located at bridge and the sum of all individual metered connections within Denarau" was merely a proposal to facilitate the audit of the consumption of the water on the Island as around 04 August 2004 there were already 73 individually metered connections on the Island.

The Defendant did not agree to any proposal and has not assumed any responsibility or obligation to pay the said difference.

Between 2009 to 2011 the Defendant met with the Plaintiff on multiple occasions during which the Plaintiff was made aware of the illegal tapping-off water by other individuals and business enterprises. The Plaintiff failed to take any action regarding this.

4. In reply the Plaintiff referred to letter of 04 August 2004 which indicated that both parties had a meeting on 02 August 2004.

In a letter dated 30 September 2013 solicitors for DCL informed that:

- The Defendant were the initial developer of the Island;
- The Defendant originally owned and controlled, DCL;
- The Defendant was making payments to PWD in respect of the Master Meter until December 2005;
- Around November 2011 the Defendant existed DCL;
- DCL is now owned by the owners of land on the Island;
- DCL manages, control and administers the Island on behalf of the shareholders;
- DCL was never the owner or developer of the Island;
- DCL never assumed the liability of the Defendant;
- DCL did not assumed the role of developer from the Defendant when the Defendant existed DCL.

The Plaintiff had investigated into the allegation of illegal tapping-off water but found there was no substance to the allegation.

5. Order 18 rule 18 (1) (a), (b) (c) and (d) of the High Court Rules reads;

- (1) *The court may at any stage of proceeding order to be struck out or amended any pleadings or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that –*
- (a) *It discloses no reasonable cause of action or defence, as the case may be;*
 - (b) *It is scandalous, frivolous or vexations;*
 - (c) *It may prejudice, embarrass or delay the fair trial of the action;*
 - (d) *It is otherwise an abuse of process of the court, and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”*

6. Sub rule 2 states that “no evidence shall be admissible on an application under paragraph (1) (a)”.
7. In **Lindon v Commonwealth of Australia (No. 2)** [1996] HCA 14; 70 ALJR 541; 136 ALR 251 Kirby J outlined applicable principles for summary relief of striking out and these are:

1. *It is a serious matter to deprive a person of access to the courts of law for it is there that the rule of law is upheld, including against Government and other powerful interests. This is why relief, whether under O 26 r 18 or in the inherent jurisdiction of the Court, is rarely and sparingly provided (General Steel Industries Inc v Commissioner for Railways (NSW) (1967) 112 CLR 125 at 128f; Dyson v Attorney-General (1911) 1 KB 410 at 418);*

2. *To secure such relief, the party seeking it must show that it is clear, on the face of the opponent's documents, that the opponent lacks a reasonable cause of action (Munnings v Australian Government Solicitor (1994) 68 ALJR 169 at 171f) or is advancing a claim that is clearly frivolous or vexatious (Dey v Victorian Railways Commissioners (1949) 78 CLR 62 at 91);*

3. *An opinion of the Court that a case appears weak and such that it is unlikely to succeed is not, alone, sufficient to warrant summary termination (Coe v The Commonwealth (1979) 53 ALJR 403; Wickstead v Browne (1992) 30 NSWLR 1 at 5-7). Even a weak case is entitled to the time of a court. Experience teaches that the concentration of attention, elaborated evidence and argument and extended time for reflection will sometimes turn an apparently unpromising cause into a successful judgment;*

4. *Summary relief of the kind provided for by O 26 r 18, for absence of a reasonable cause of action, is not a substitute for proceeding by way of demurrer (Coe v The Commonwealth (1979) 53 ALJR 403 at 409). If there is a serious legal question to be determined, it should ordinarily be determined at a trial for the proof of facts may sometimes assist the judicial mind to understand and apply the law that is invoked and to do so in circumstances more conducive to deciding a real case involving actual litigants rather than one determined on imagined or assumed facts;*

5. *If, notwithstanding the defects of pleadings, it appears that a party may have a reasonable cause of action which it has failed to put in proper form, a court will ordinarily allow that party to reframe its pleading (Church of Scientology v Woodward (1980) 154 CLR 25 at 79). A question has arisen as to whether O 26 r 18 applies to part only of a pleading (Northern Land Council v The Commonwealth (1986) 161 CLR 1 at 8).....; and*

6. *The guiding principle is, as stated in O26 r18(2), doing what is just. If it is clear that proceedings within the concept of the pleading under scrutiny are doomed to fail, the Court should dismiss the action to protect the defendant from being further troubled, to save the plaintiff from further costs and disappointment and to relieve the Court of the burden of further wasted time which could be devoted to the determination of claims which have legal merit.*

No Reasonable Cause of Action

8. In **Bidesi v. Howard** a Suva High Court Civil case number 513 of 1992 Jesuratnam J. held that:

“It is not enough for the defendant to show at this stage that the Plaintiff has a weak case. He should go further and show the Plaintiff has no case at all”.

9. **The Supreme Court Practice Volume 1, 1993 Part 1** at paragraph 18/19/7 outlines the principle as follows:

“A reasonable cause of action means a cause of action with some chance of success when only the allegation in the pleadings is considered (per Lord Pearson in Drummond – Jackson v. British Medical Association [1970] 1 W.L.R. 688”.

It further goes on to state that;

“so long as the Statement of Claim or the particulars (Darey v. Bentinck [1893] 1 QB. 185) disclose some cause of action, or raise some question to fit to be decided by a Judge or a Jury the mere fact that the case is weak, and not likely to succeed is no ground for striking it out (Moure v. Lawson (1915) 31 T.L.R. 418, C.A.; Wenlock v. Moloney [1965] 1 W.L.R. 1238).

10. No evidence is allowed whilst making a finding on an application for striking out on the ground the claim discloses no reasonable cause of action.
11. During the hearing the counsel for the Defendant relied on a verification report from the Plaintiff.

The said report is an annexure to the affidavit of Elizabeth Morris filed in support of the summons to strike out.

The pleadings - statement of claim, statement of defence or the Third Parties pleadings do not mention the verification report.

Neither has the Defendant applied to amend its statement of defence.

12. As mentioned earlier Order 18 Rule 18 (2) of the High Court rules does not permit use of evidence for striking out claim on the grounds of pleading disclosing no reasonable cause of action.
13. Hence, I will not take into account the verification report whilst making determination on the ground that the pleading does not disclose a reasonable cause of action.
14. As per the claim there is unpaid bill amounting to \$552,962.35 for water supply to the Island.
15. The Defendant and the Third Parties have denied liability.
16. It is a matter for trial to decide who is liable for payment of the outstanding bill.
17. Hence, I find there is a cause of action which ought to be tried in Court on oral evidence.
18. Accordingly, the Defendant's application on the ground that the claim discloses no reasonable cause of action fails and is dismissed.

Frivolous and Vexatious

19. Paragraph 18/19/15 of The Supreme Court Practice Volume 1, 1993 Edition defines the terms frivolous and vexatious as follows:

“By these words are meant case which are obviously frivolous or vexatious or obviously unsustainable, per Lindley L.J. in Alt – Gen of Duchy of Lancaster v. L. & N.W. Ry. [1892] 3ch. 274 p. 277”.

20. In **Goodson v Grierson, The Argus LR volume XIV, May 12 1908** at page 16, the Court held for a *“Defendant to succeed in an application to the Court under its inherent jurisdiction to put an end to an action as frivolous and vexatious, it was necessary for him to prove not that the Plaintiff might not succeed but that he could not possibly succeed.”*
21. In **Tracey v Minister for Justice, Equality and Law Reforms & Others [2019] IEHC 183 (delivered on 22 March 2019)** Eager J. found that:

“...the category of proceedings that will be considered to be frivolous and vexatious is broader and extends to proceedings which although they have reasonable prospect of success will not confer any tangible benefit on the plaintiff or are taken for collateral or improper motives.”

22. The High Court of Ontario in **Re Lang Michener v Fabian [1987] 37 D.L.R. 68** identified some factors to indicate a proceeding to be vexatious and these are:

- “(a) the bringing up on one or more actions to determine an issue which has already been determined by a court of competent jurisdiction;*
- (b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief;*
- (c) where the action is brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;*
- (d) where issues tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;*
- (e) where the person instituting the proceedings has failed to pay the costs of unsuccessful proceedings;*

(f) *where the respondent persistently takes unsuccessful appeals from judicial decisions."*

23. Whilst hearing an appeal from a decision of the High Court refusing to strike out Plaintiff's claim on one of the grounds being the claim is frivolous and/or vexatious, Mc Cracken J. in **Fay v Tegral Pipes Limited [2005] IEHC 34 (delivered on 27 May 2005)** found that in an application for striking out "*while the words "frivolous and vexatious" are frequently used in relation to applications such as this, the real purpose of the jurisdiction is to ensure that there will not be an abuse of the process of the Courts. Such abuse cannot be permitted for two reasons. Firstly, the Courts are entitled to ensure that the privilege of access to the Courts, which is of considerable constitutional importance in relation to genuine disputes between parties, will only be used for the resolution of genuine disputes, and not as a forum for lost causes which, no matter how strongly the party concerned may feel about them, nevertheless have no basis for a complaint in law. The second, and equally important, purpose of the jurisdiction is to ensure that litigants will not be subjected to the time consuming, expensive and worrying process of being asked to defend a claim which cannot succeed."*

Abuse of Process of the Court

24. Pathik J, in **Goldstein v. Narayan a Suva High Court Civil Action No. HBC 0413 of 2001** considered following passage from Halsbury's Laws of England 4th Edition Volume 37 at paragraph 434 to be pertinent when considering an application for striking out claim on grounds of abuse of process:

"An abuse of the process of the court arises where its process is used, not in good faith and for proper purposes, but as a means of vexation or oppression or for ulterior purposes, or more simply, where the process is misused. In such a case, even if the pleading or indorsement does not offend any of the other specified grounds for striking out, the facts may show that it constitutes an abuse of the process of the court, and on this ground the court may be justified in striking out the whole pleading or

indorsement or any offending part of it. Even where a party strictly complies with the literal terms of the rules of court, yet if he acts with an ulterior motive to the prejudice of the opposite party, he may be guilty of abuse of process, and where subsequent events render what was originally a maintainable action one which becomes inevitably doomed to failure, the action may be dismissed as an abuse of the process of the court."

25. Paragraph 18/19/17 in The Supreme Court Practice Volume I, 1993 Part I reads:

"This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent the improper use of its machinery, and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation".

26. In its affidavit in support filed on 22 November 2019, the Defendant refers to a verification report that it received from the Plaintiff on 21 February 2019.

27. According to the Defendant, the said report shows that the Defendant is not responsible for the excess billing/unpaid water rates.

28. In particular the Defendant states that as per the report the purpose of the report is to:

- (i) Verify and identify the reasons for the increase in billing and whose responsibility is it to cater for the excess billing.*
- (ii) Identify and obtain persons responsible for the reticulation system.*
- (iii) Identify who does the inspection works, repair or plumbing works on Denarau Island.*

29. The conclusion of the report was:

“The whole Denarau pipe reticulation assets is owned by Denarau Corporation Limited, meaning the main master meter on the bridge belongs to Denarau Corporation Limited (Meter #EG1-0) therefore if there is a leakage between the main meter to the custom meter (residential, hotels, irrigation) the responsibility to fix these leakages and verification works/bill payment (difference) other customers will only have to pay their individual bills.”

30. According to the Plaintiff, the Defendant has not exhibited the Articles of Association or the Denarau Island charter to confirm that DCL is responsible for the water facilities and thus for payment of the water levies.
31. The Defendant’s statement of claim against the Third Party namely Rylestone Limited shows that Rylestone Limited illegally connected a pipeline to the water infrastructure that was owned by the Defendant thus using water for the golf course without paying dues for the same.
32. Issue such as who owns the water facilities and who has been using water without paying are issues for trial and not to be decided on summarily.
33. The verification report was carried out by the Plaintiff’s inspection team to ascertain reasons for the excess billing and who is liable to cater for such excess.
34. The report states that the reticulation assets and the main master meter is owned by the DCL with further recommendation that the responsibility to fix any leakage or any difference in billings to be done by DCL. This is not a conclusive finding. The report is based on what the inspection team was told when they visited Denarau Island. DCL has not accepted the report.

It needs to be ascertained if the Defendant had legally vested the water facilities to DCL.

35. The Denarau Verification report relied upon by the Defendant is prepared by the Plaintiff and is summarized as follows.

The purpose of the report is:

- *To verify and identify the reason for increase in billings and whose responsibility is it to cater for the excess billings*
- *To identify and obtain persons responsible for reticulation system.*
- *To identify who does the inspection works, repair or plumbing works on Denarau Island*

A team field was deployed for manual verification against the existing Denarau Billing Master Information.

The verification exercise was undertaken in 2016 with the verification/investigation work been ongoing from 2015 to complement Denarau Meter Replacement Programs under Water Authority of Fiji's Capital Projects.

The conclusion made by the team was:

- *Denarau Corporation Limited failed to provide the following details to allow invisible leakage verification*
 - a. *As built drawing of all pipe works on the Island from Denarau Bridge to end of mains.*
 - b. *All as built drawing of all hotel and residential connection from mains to their individual properties.*
 - c. *Details of other utilities.*
- *Water Authority of Fiji's responsibility is only up to the Denarau Master Meter in terms of repair works and verification, meter readers only up to the meters.*

- *Upon visible leak search along the Island, Water Authority of Fiji identified and fixed those visible leakage.*
- *The whole Denarau pipe reticulation assets is owned by Denarau Corporation Limited, meaning the main master meter on the bridge belongs to Denarau Corporation Limited (Meter # EG1-0) therefore if there is a leakage between the main meter to the customer meter (residential, hotel, irrigation) the responsibility to fix these leakages and verification works/bill payment (difference) other customers will only have to pay their individual bills."*

36. The report does not specify when DCL became owners of the Denarau pipe reticulation assets.

37. Neither has the Defendant in its statement of defence or in its statement of claim against the Third Parties pleaded when DCL became owners.

38. The claim of \$552,962.35 is said to have accumulated from November 2011 to 31 August 2013.

39. The first named Third Party DCL has denied liability and states:

- It does not own premises on the Island to which water is supplied to by the Plaintiff and the alleged unaccounted water usage is a matter the Plaintiff should raise with respective owners of land on the Island
- The installation of the Master Meter and subsequent installation of separate meters on individual properties was to be carried out in a manner agreed between the Plaintiff and the Defendant.
- The Master Meter was never in the name of the first named Third Party.

40. Considering the above I do not find that the claim by the Plaintiff to be frivolous or vexation and unsustainable. Nor is it an abuse of the process of the court.
41. There is a water bill amounting to \$552,962.35 which is unpaid for.

With both the Defendant and the Third Parties denying liability it is only proper that after hearing evidence will the court be able to ascertain who is liable to pay the Plaintiff for the unpaid bills.

42. Accordingly, the Defendant's summon dated 22 November 2019 shall fail and is dismissed with cost awarded in favour of the Plaintiff.

Further and Better Particulars of the Third Party Statement of Claim

43. The second application for determination is made by the First Named Third Party Denarau Corporation Limited who via its summons filed on 15 August 2019 seeks following further and better particulars from the Defendant:

- (a) *As to paragraph 8 (b) of Statement of Claim dated 09 May, 2014 of the allegation "the full particulars of which will be disclosed at trial" provide full details and particulars relied on by the Defendant.*
- (b) *As to paragraph 10 of the Defence dated 15 April, 2014 referred to in paragraphs 2 and 3 of the Statement of Claim, of the allegation "... And some lots within the hotel precincts of Denarau Island which it developed" provide full particulars and details each of the lots within the hotel precincts intended to be referred to by the Defendant.*
- (c) *As to paragraph 10 of the Defence dated 15 April 2014 referred to in paragraphs 2 and 3 of the Statement of Claim of the allegation*

“The Defendant avers that PWD installed water meters in each of the said precinct to enable it to charge for water usage.” Provide full particulars, details and with the number of meters installed in each precinct together with date/s of such installation.

- (d) *As to paragraph 16 of the Defence dated 15 April, 2014 referred to in paragraphs 2 and 3 of the Statement of Claim of the allegation: “... pleads that it also has had separate water meter connections which it was using and it has regularly paid the rates for water supplied via such connections as and when tendered to it by the Plaintiff.” Provide full details of the separate water meter connections giving the date of installation and the meter number/s under the Defendant’s name.*
- (e) *As to paragraph 17 of the Defence dated 15 April 2014 referred to in paragraph 2 and 3 of the Third Party Statement of Claim of the allegation “sought the Defendant’s assistance to identify the same....” Provide the full details as to when (specifying the date) and what form of assistance was sought; whether such assistance was sought orally or in writing and in either case the date thereof and if in writing identifying the document.*
- (f) *As to paragraph 24 of the Defence dated 15 April 2014 referred to in paragraphs 2 and 3 of the Third Party Statement of Claim of the allegation: “..... the Defendant met with the Plaintiff on multiple occasions during which the Plaintiff was made aware of the illegal tapping-off water by other individuals and business enterprises, some of whom were doing so for personal use, consumption and benefit” provide exact number of meetings specifying the dates thereof; identifying the individuals and business enterprises involved in the illegal tapping.*

44. The said application is made pursuant to Order 18 Rule 11(3) of the High Court Rules which gives the Court discretion to:

“..... order a party to serve on any other party particulars of any claim, defence or other matter stated in his or her pleading, or in any affidavit of his or her ordered to stand as a pleading, or a statement of the nature of the case on which he or she relies and the order may be made on such terms as the court thinks just.”

45. The Supreme Court Practise (1993 Edition) volume 1 at paragraph 18/12/2 outlines the function of particulars:

*“(1) To inform the other side of the nature of the case they have to meet as distinguished from the mode in which that case is to be proved;
(2) To prevent the other side from being taken by surprise at the trial;
(3) To enable the other side to know what evidence they ought to be prepared with and to prepare for trial;
(4) To limit the generality of the pleadings;
(5) To limit and define the issues to be tried and as to which discovery is required;
(6) To tie the hands of the party so that he cannot without leave go into any matters not included.”*

46. The purpose of the rule is that *“parties should in their pleadings state all the “necessary particulars” of any claim, defence or other matter pleaded and if not stated, the court has powers to order a party to serve either (1) particulars or further and better particulars of any claim, defence or other matter pleaded, or (2) a statement of the nature of the case relied on, or (3) both such particulars and statement”* – The Supreme Court Practice (supra).

47. The Supreme Court Practice (supra) at paragraph 18/12/39 on page 320 states that “*such application should normally be preceded by a written request for the required particular*”.

It further goes on to state that “*the question whether and what particulars should be ordered is one of discretion. Applications may be refused where there has been there has been an inexcusable delay in making the application or the application is made at a late stage*”.

Form of Particulars

48. The Supreme Court Practice (supra) at paragraph 18/12/40 on page 321 outlines how particulars are to be served and is summarized as follows.

The explanatory note states that if not contained in pleadings, particulars served separately either on request or by order, they become part of the pleadings.

Hence it should be served as a formal document as a pleading with the title of the action and description of the document and not in the form of a letter.

If they exceed three folios in the case of debt, expenses or damages (but not otherwise) they must be set out in a separate document referred to in the pleading.

The request or order must be incorporated with the particulars, so that each item of the particulars must follow immediately after the corresponding item of the request or order.

The request or order for further and better particulars, and the particulars supplied in response thereto, must therefore not remain in two separate documents but must be married together and embodied in a single document, which will set out (1) the number and letter of the paragraph and subparagraph where applicable, of the pleadings in question (2) what particulars have been requested or ordered under each such paragraph and subparagraph, and (3) the further and better particulars supplied in response to such request or order.

49. The current proceeding is at the pre-trial conference stage where parties have filed their respective affidavit verifying list of documents and have proceeded with discovery and pre-trial conference.
50. The solicitors for the First named Third Party had via their letter of 21st June 2019 made request from the Defendant's solicitors for further and better particulars.
51. According to the Defendant [via affidavit of Elizabeth Morris sworn on 30th September 2019 and filed in response to the summons] they had via a letter dated 05th August 2019 responded to the First Third Party's Solicitors letter as follows:

(a) *That the full particulars of paragraph 8(b) requested pertains to information regarding infrastructure, common facilities and area on Denarau Island which were and are owned (legally and/ or beneficially), managed and maintained by them DCL as body corporate for all of Denarau Island.*

(b) *As to paragraph 10 of the Statement of Defence dated 9th May 2019, that the information requested were lots developed by the Defendant prior to the execution of the Denarau Island Charter and handling over of all development, management, administration and control of Denarau Island to DCL. This information is available in records kept by DCL.*

As regards to Public Work Department installed water meters, DCL was referred to annexures 1, 2 and 7 of the Defendant's bundle of documents which was served to them on 21 January 2019 particularizing meter numbers, date of bills, payments and arrears.

(c) *As to paragraph 16 of the Statement of Defence, that the information they requested were contained in annexure 7 of the*

bundle of documents served to them on 21 January 2019 detailing meter numbers, date of bills, payments and arrears.

(d) As to paragraph 17 of the Statement of Defence, particulars of assistance sought and rendered by the Defendant are in annexures 8 and 9 of the Defendants bundle of documents already disclosed to them and evident in exchange letters between Public Works Department and the Defendant in 2004.

(e) As to paragraph 24 of the Statement of Defence, particulars of the meetings and illegal tapping-off water by individuals and enterprises are in the correspondences between the parties in 2004 and in later meetings evident in the email exchanges between the parties from 2011 to 2012 copies of which are in annexure 7 of the Defendants bundle of documents bundle of documents already disclosed to you.

Paragraph 8 (b) of the statement of claim dated 09th May 2014

52. The First Third Party is asking for full details and particulars for allegation in paragraph 8 (b) of the statement of claim dated 09th May 2014 which is the Defendant's statement of claim against the Third Parties.

The said statement of claim has been replaced by amended statement of claim filed on 22nd August 2019.

53. However, upon perusal of the Defendant's amended statement of claim against the Third Parties paragraph 8 of the claim reads:

“The Plaintiff claims that between November 2011 and August 2013, it noticed a substantial usage of water at the Master Meter but the same

was not recorded on or reconciling with the meter readings of the individual water meters on Denarau Island”.

54. There is no sub-paragraph (b) or allegation made as stated in the First Third Party’s summon. Hence, I do not find it proper to deal with this request and make any orders for further and better particulars.

Paragraph 10 of the Defence dated 15th April 2014 referred to on paragraph 2 and 3 of the Statement of Claim.

55. Paragraph 10 of the Statement of Defence reads:

“That save for installing pipeline within the residential, industrial and commercial precincts and some lots within the hotel precinct of Denarau Island which it developed the Defendant denies the allegation contained in paragraph 10 of the Statement of Claim. The Defendant avers that Public Works Department installed water meters in each of the said precincts to enable it to charge for water usage”.

56. In her affidavit sworn on 30 September 2019, Elizabeth Morris informs at paragraph 5 (b) that via a letter of 05th August 2019 the Defendant responded to the request made by the First Third Party.
57. According to the Defendant, the information requested were lots developed by the Defendant prior to the execution of the Denarau Island Charter and handing over of all development, administration and control of Denarau Island to DCL. This information is said to be available in records kept by DCL.
58. The Defendant has in its pleading denies having knowledge of the master meter.
59. I agree with the First Third Party’s counsel that since the Defendant had installed pipeline within the residential industrial and commercial precincts and some lots within the hotel

precincts of Denarau Island, the issue arises is that where were all these distribution pipelines connected to?

60. The particulars requested by the First Third Party would assist in finding disparity between the records of the Defendant and that of the First Third Party and allow the First Third Party to prepare for its Defence.

This will prevent the First Third Party being taken by surprise with new details. I agree with the First Third Party that the particulars requested will clarify the lots the Defendant installed pipes in and whether the pipelines were linked to the Master Meter to obtain water supply.

61. With no particulars provided for or discovery made by the Defendant, I find the Defendant ought to provide full particulars and details of lots within the hotel precincts which it developed.
62. With regards to the request for meters installed by Public Works Department, the Defendant states that it had via its letter of 05th August 2019 provided DCL with documents particularizing meter numbers, dates of bills and payments [reference is made and annexure 1,2 and 7 of the Defendant's bundle of documents disclosed on 21st January 2019].
63. I have earlier outlined the requirements of form of particulars.
64. The response given by the Defendant do not satisfy the requirements.
65. Accordingly the Defendant is to provide particulars and details of each lots within the Hotel precincts intended to be referred to by the Defendant and details of meters installed by Public Works Department in each precinct together with the date of installation.

Paragraph 16 of the Defence dated 15th April 2014 referred to in paragraphs 2 and 3 of the Statement of Claim.

66. In paragraph 16 of its Statement of Defence, the Defendant has pleaded as follows:

“16. The Defendant admits the allegation contained in paragraph 16 of the Statement of Claim and further pleads that it also has had separate water meter connections which it was using and it has regularly paid the rates for water supplied via such connections as and when tendered to it by the Plaintiff”.

67. The First Third Party seeks details of the separate water meter connections giving the date of installation and the meter number/s under the Defendant’s name.

68. According to the Defendant, particulars of details of water meters and payments are available in annexure of the Defendant’s bundle of documents already disclosed to the First Third Party.

69. Again, I find the Defendant has failed to provide particulars as required under the rules and as explained earlier in this Ruling.

70. The Defendant is ordered to provide full details of separate water meter connections giving the date of installation and meter number/s under the Defendant’s name.

Paragraph 17 of the Defence dated 15th April 2014 referred to in paragraph 2 and 3 of the Third Party Statement of Claim

71. Paragraph 17 of the Defence reads:

“That save for admitting that Public Works Department undertook an audit of metered connections on Denarau Island and sought the Defendant’s assistance to identify the same, the Defendant denies the allegations contained in paragraph 17 of the Statement of Claim. The

Defendant further pleads that the Public Work Department in exercise of its statutory duty and function ought to have kept records of all such water meters connections Denarau Island when such requests for connection were made and not relied upon the Defendant to do the same”.

72. The First Third Party is asking the Defendant to provide full details as to when (specifying the date) and what form of assistance was sought, whether such assistance was sought orally or in writing and in either case the date thereof and if in writing identifying the document.
73. Again, the Defendant in Morris’s affidavit at paragraph 5 and state that *“the particulars of assistance sought and rendered by the Defendant are in annexures 8 and 9 of the Defendant’s bundle of documents and evident in exchange of letters between Public Works Department and the Defendant in 2004”.*
74. In her submission, the Defendant’s counsel further submitted that the particulars sought are outlined in the Third Parties Statement of Defence in paragraph 3 (b) (ii) to (iii).
75. The First named Third Party’s counsel in his written submission submits that since the Defendant has denied having to do anything with the water infrastructure in Denarau, it is hence pertinent to know what sort of assistance was sought from the Defendant and when was this assistance sought. This will assist in determining the Defendant’s role and responsibility (if any) and maintenance of the water infrastructure.
76. The Defendant’s has failed to provide the particulars as sought under the rules.
77. The Defendant is ordered to provide full details as to when (specifying the date) and what form of assistance was sought, whether such assistance was sought orally or in writing and in either case the date thereof and if in writing identifying the document.

Paragraph 24 of the Defence dated 15 April 2014 referred to in paragraphs 2 and 3 of the Third Party Statement of Claim

78. Paragraph 24 of the Statement of Defence reads:

“The Defendant denies that it is liable for the water charges referred to in paragraph 24 of the Statement of Claim, and avers that between 2009 and 2011, the Defendant met with the Plaintiff on multiple occasions during which the Plaintiff was made aware of the illegal tapping off water by other individuals and business enterprises, some of whom were doing so for their personnel use, corruption and benefit”

79. The First named Third Party requests the Defendant to provide exact number of meetings specifying exact number of meetings specifying the dates thereof; identifying the individuals and business enterprises involved in the illegal tapings.

According to it, the particulars sought will assist them to prepare their defence and assist in ascertaining who have been the actual consumers and therefore be held liable to pay.

80. According to the Defendant [on paragraph 5 (e) of the Morris’s Affidavit] the particulars of the meetings and illegal tapping-off water by individuals and enterprises are in the correspondence between the parties in 2004 and in later meetings evident in the email exchanges between the parties from 2011 to 2012 copies of which are in annexure 7 of the Defendant’s bundle of documents.

81. Yet again the Defendant has failed to provide particulars as under the rules and has made reference to its bundle of documents which are evidence.

82. The Defendant is ordered to provide exact number of meetings specifying exact number of meetings specifying the dates thereof; identifying the individuals and business enterprises involved in the illegal tapings.

Orders

On the Defendant's Application dated 22 November 2019

83. The Defendant's application for striking out of the claim is dismissed with cost awarded in favour of the Plaintiff.

84. Cost is summarily assessed at \$1,000 and which should be paid by the Defendant to the Plaintiff before 12 noon on 19 August 2022.

On the First Third Party's Application dated 15 August 2019

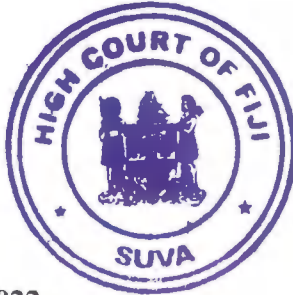
85. The Defendant by 12 noon 09 September 2022 file and serve further and better particulars as per the rules as follows:

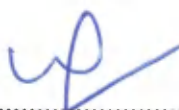
- a) Paragraph 10 of the Defence dated 15th April 2014 referred to on paragraph 2 and 3 of the Statement of Claim:
provide particulars and details of each lots within the Hotel precincts intended to be referred to by the Defendant and details of meters installed by Public Works Department in each precinct together with the date of installation.

- b) Paragraph 16 of the Defence dated 15th April 2014 referred to in paragraphs 2 and 3 of the Statement of Claim:
provide full details of separate water meter connections giving the date of installation and meter number/s under the Defendant's name.

- c) Paragraph 17 of the Defence dated 15th April 2014 referred to in paragraph 2 and 3 of the Third Party Statement of Claim
provide full details as to when (specifying the date) and what form of assistance was sought, whether such assistance was sought orally or in writing and in either case the date thereof and if in writing identifying the document

- d) Paragraph 24 of the Defence dated 15 April 2014 referred to in paragraphs 2 and 3 of the Third Party Statement of Claim provide exact number of meetings specifying exact number of meetings specifying the dates thereof; identifying the individuals and business enterprises involved in the illegal tapings




.....
Vandhana Lal [Ms]
Acting Master
At Suva.

29 July 2022

To:

1. R Patel Lawyers, Solicitors for the Plaintiff;
2. Howards Lawyers, Solicitors for the Defendant;
3. AK Lawyers, Solicitors for the First Third Party;
4. FNPF Legal Services, Solicitors for the Second Third Party.