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IN THE SUPREME COURT OF TONGA  
CIVIL JURISDICTION  
NUKU'ALOFA REGISTRY

CV 50 of 2018

**BETWEEN :** LEISA MARIE FRANCIS

**Plaintiff**

**AND** LOLESIO SUSITIANO LUI

**Defendant**

**BEFORE LORD CHIEF JUSTICE PAULSEN**

**Counsel:** Mr. S Fonua for the plaintiff  
Mr. W C Edwards for the defendant

**Date of Hearing:** 6 February 2019

**Date of Ruling:** 6 February 2019 with reasons 14 February 2019

**REASONS FOR RULING**

**The application**

- [1] This ruling concerns an application by the plaintiff pursuant to O. 21 Rule 2(3) of the Supreme Court Rules that judgment be entered against the defendant upon the admission of the plaintiff's claim.
- [2] The application was opposed by the defendant. When it came before me on 6 February 2019 I dismissed the application and advised Counsel that I would issue my reasons in writing in due course. These are those reasons.

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## **Background**

- [3] For the purposes of this ruling the relevant facts can be stated succinctly.
- [4] The plaintiff is an Australian woman and the defendant is a Tongan man. They were since 2011 in a personal relationship and had two children together. They have never married.
- [5] From around 2013 the plaintiff and the defendant operated a whale watching and sports fishing business at Vava'u. The defendant has been primarily responsible for the operations and management of the business. The boats and other equipment for the business were purchased by the plaintiff, although boats were licensed in the name of the defendant.
- [6] Relevantly for the purposes of this application, the plaintiff purchased from her own funds the following:
- (a) Aluminium Dingy at US\$8,000;
  - (b) Boat 'Leisa Marie' at US\$91,388;
  - (c) Trailer at US\$7,829;
  - (d) Boat 'Reel Addiction' at NZ\$100,000; and
  - (e) Boat 'Miss Iris' at US\$167,800.
- [7] In July 2017, the defendant ended the relationship between the parties and the plaintiff left Tonga in October 2017 with the two children and returned to Australia.
- [8] The defendant has continued to operate the business and has retained all the assets and the profits.
- [9] The plaintiff commenced this action seeking to recover not only the assets referred to above but also amounts which she says she is entitled to upon the termination of the relationship (the details of which are not relevant for present purposes).

## **The pleadings**

- [10] The plaintiff's latest pleading is a first amended statement of claim. There are two causes of action.
- [11] The first cause of action pleads that the parties entered into a 'verbal partnership agreement' to operate a 'joint business' pursuant to which the plaintiff would supply the boats and other equipment and the defendant would manage and operate the business and they would share the profits in equal shares. It is then alleged that the partnership has been terminated entitling the plaintiff to, *inter alia*, either the plaintiff's total contributions to the business or to 'possession and ownership of the 3 boats, trailer, fishing gears and other ancillaries'.
- [12] The second cause of action alleges that the defendant induced the plaintiff to invest in the business and the defendant has been unjustly enriched at her expense. The plaintiff seeks a declaration that the defendant holds the assets of the business on a constructive trust for her benefit and also for an account in respect of all profits, proceeds or benefits he has obtained from the business.
- [13] In his statement of defence the defendant has admitted that the boats and other assets of the business were purchased by the plaintiff but otherwise largely denies the plaintiff's pleading and her entitlement to any of the relief sought.

### **O. 21 Rule 1 and 2(3) and the plaintiff's submissions**

- [14] The relevant rules read:

#### *O. 21 Rule 1*

Any party may at any time give notice, by pleading or otherwise in writing, that the truth of any matter pleaded by another party is admitted.

O. 21 Rule 2(3)

Where admissions of fact have been made under this Order the Court may, upon the application by any party, enter such judgment or order as the party making the application may be entitled to upon those admissions without waiting for any other issues between the parties to be determined.

- [13] Mr. Fonua presented written submissions and he spoke to them. He relied upon the first cause of action under the heading 'Distribution of Assets of Partners'. He submitted that as the plaintiff paid for the business assets she is entitled to retain them upon the termination of the parties' relationship and that it follows she is also entitled to judgment against the defendant upon admission. He relied upon *Ualesi v Tukutoa & Ngalu* [1979] Tonga LR 83 and *Vance v Guerra* [2008] Tonga LR 161 as supporting authorities.
- [14] Mr. Fonua's submission is contrary to the plaintiff's pleading that the assets were purchased for the partnership business. It is also contrary to the position taken by the defendant that he is the sole owner of the assets as the plaintiff had no interest at all in the business or its assets.
- [15] Whether the assets are partnership assets or are owned by one or other of the parties can only be resolved at trial and not upon an application of this kind. I note that the plaintiff's present pleading might (unless amended) preclude an argument that the plaintiff alone owns the assets.
- [16] The cases of *Ualesi* (supra) and *Vance* (supra) do not assist the plaintiff. Both cases concerned the application of a statutory provision for the distribution of property upon divorce. These parties were never married.
- [17] If the assets in issue were partnership assets, upon dissolution the plaintiff cannot claim sole ownership of them. In an action following dissolution the Court will order that the affairs of the partnership be wound up with all necessary accounts and inquiries made, which necessarily implies the sale of the assets sold, the discharge of partnership liabilities and the adjustment of rights between the parties.

[18] I have not overlooked the plaintiff's second cause of action, but Mr. Fonua did not suggest that because the plaintiff paid for the assets she would, without more, be entitled to relief upon the basis of a remedial constructive trust. He was correct not to do so. No such finding could be made without a detailed analysis of the circumstances of the case.

### **Result**

[19] The defendant's admission that the plaintiff paid for the assets does not, in and of itself, entitle the plaintiff to the relief claimed. Her application is dismissed.

[20] I make no order for costs as the defendant does not seek costs.

[21] The plaintiff is suffering from financial hardship and this case requires an urgent hearing. I have made strict timetabling orders and set the case down for trial on **24-28 June 2019**.

[22] I should also make it clear that whilst I consider this present application was misguided nothing in this ruling should be taken as an indication as to the ultimate resolution of this case.



**NUKU'ALOFA: 14 February 2019.**

A handwritten signature in blue ink, appearing to read "O.G. Paulsen".

**O.G. Paulsen  
LORD CHIEF JUSTICE**