

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 158 of 2012

BETWEEN : **LIANGUI WANG** of Simla, Lautoka trading as **FRESH GREEN**, having its registered office at Valley Road Sigatoka

1ST PLAINTIFF

: **RUIGE TIAN** of Lautoka trading as Tian's Harvest, having its registered office at Kavanagasau Settlement, Sigatoka

2ND PLAINTIFF

: **JIE LIU** of Nadi trading as Lily Garden, having its registered office Valley Road, Naduri Village, Sigatoka

3RD PLAINTIFF

AND : **CHINA GEZHOUBA GROUP (FIJI BRANCH) COMPANY LIMITED** a limited liability company having its registered office at 18 Rukua Street, Nailuva Road, Suva

DEFENDANT

BEFORE : **Master Thushara Rajasinghe**

COUNSEL : **Mr. Sukimi A.** for the Plaintiff
Mr. Fong L. for the Defendant

Date of Hearing : **21st May, 2014**

Date of Ruling : **12th September, 2014**

RULING

A. INTRODUCTION

1. The Defendant filed this Summons for specific discovery dated 23rd of January 2014 seeking following orders inter alia,

- i. *An order pursuant to Order 24 rule 7 that the Plaintiffs file and serve an affidavit stating whether their;*
 - a. *Profit and loss accounts for the years ending 2009, 2010 and 2012 and*
 - b. *Income tax returns for the year 2009, 2010 and 2012,*

are or have at any time been, in their possession, custody or power, and if the documents are not in their possession, custody or power stating when they parted with them and what has become of them.
- ii. *The Plaintiffs pay the Defendant the cost of this application and all incidental costs thereto,*

2. The Defendant made this application pursuant to Order 24 rule 7 of the High Court rules and under the inherent jurisdiction of this court.
3. The Plaintiffs objected this Summons, wherefore; the directions were given them to file their affidavit in opposition, which they filed on 4th of March 2014. The Defendant then filed its reply affidavit on 26th of March 2014. This Summons was then set down for hearing on 5th of May 2014. The learned counsel for the Plaintiffs and the Defendant made their respective oral arguments and submissions during the course of the hearing and tendered their respective written submissions. Having considered the Summons, respective affidavits and submissions of the parties, I now proceed to pronounce my ruling as follows.

B. BACKGROUND,

4. The Defendant filed this Summons pursuant to Order 24 r 7 seeking to discover Profit and Lost accounts and Income Tax Returns of the Plaintiffs for the years of 2009, 2010, and 2012.
5. The Plaintiffs instituted this action by way of a writ of summons dated 8th of 2012. The Plaintiffs claims are founded on their allegation that the Defendant conducted the road works so negligently and unskillfully, where they blocked the water culvert located near

the Plaintiffs' farms which blocked the farms' drainage system and caused the farms to flood after the heavy rainfall on 14th of October 2011. Having stated that the flood destroyed their crops, the Plaintiffs seek following orders inter alia that;

- i. Order that the Defendant to pay damages to the Plaintiffs in the sum of \$94,296.50,*
 - ii. Damages for soil erosion,*
 - iii. Damages for cleanup costs,*
 - iv. General Damages,*
 - v. Interest on the judgment sum,*
 - vi. Cost on a solicitor/client indemnity basis,*
 - vii. Such further or other relief that this honourable court deems just and equitable,*
6. The Defendant filed its statement of defence which was followed by the Plaintiffs' reply to the statement of defence. The matter then proceeded to the filing of list of documents and inspection. At that stage the Defendant filed this Summons seeking for specific discovery of the documents as mentioned in the Summons. The Defendant deposed in its affidavit in support that they have written to the solicitors of the Plaintiffs requesting to discover these documents, however, it was refused by them. The Plaintiffs have refused it on the ground that they will not use their profit and loss accounts and income tax returns during the hearing. However, the Defendant took a different view and contended that the documents requested by them are materially relevant for them to properly assess the loss suffered by the Plaintiffs.
7. The Plaintiffs in their reply affidavit deposed that their claim of damages is for the loss of farm products and not for the loss of profit and income. Hence, the profit and loss account and the income tax returns have no relevancy to the determination of this claim. Wherefore these documents are not discoverable.

C. THE LAW

8. Order 24 rule 7 has been provided the procedure to make an application for specific discovery of documents, where it states that ;

(1) *Subject to rule 8, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then in his possession, custody or power, when he parted with it and what has become of it.*

(2) *An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 2 or rule 3.*

(3) *An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter."*

9. The scope of the hearing of the application of this nature has been stipulated under Order 24 rule 8. The court should satisfy at the hearing of the application that the discovery is necessary either for the fair disposal of the matter or save the costs of the parties in the hearing. Apart from that it is the onus of the applicant to satisfy the court that the documents specified or described in the application actually exist or have existed. Moreover, the applicant is required to satisfy that the documents are in the physical possession or custody of the other party.

10. Hon. Master Tuilevuka (as his lordship then was) in **Jaureguy v Sen** (2010) FJHC 482; HBC218.2002L (29 October 2010) while referring **Singh v Minjesk Investment Corporation Ltd & Another** (High Court Civil Action No HBC 148 of 2006) has

discussed the applicable principles for specific discoveries of documents, where he observed that;

“What emerges clearly is that onus initially is on the applicant to establish the following by way of affidavit evidence;

- i. Identify clearly the particular document or documents or class of documents that he seeks from to be discovered by the opposing party,*
 - ii. Show a prima facie case that the specific document or class of documents do in fact exist or have existed,*
 - iii. Established that these documents are relevant in the sense that they relate to the matter in question in the action. In other word, the information in the document must either directly or indirectly enable the applicant either to advance his own case or to damage the case of his or her adversary. Alternatively, it is sufficient if the information in the document is such that it may fairly lead to a train of enquiry which may have either of these consequences. The relevance of a document is to be tested against the issues and/or questions raised by the pleadings (see **A.B.Anand (Christchurch) Ltd v ANZ banking Group Limited** (1997) 43 FLR 2 (30 January 1997),*
 - iv. Show that these documents were in the physical possession, custody (i.e. the mere actual physical or corporeal holding of the document regardless of the right to its possession) or power (i.e. the enforceable right to inspect it or to obtain possession or control of the documents from one who ordinarily has it in fact) of the opposing party (see Order 24 rule 7 (3)).*
11. Having considered the descriptive observation of Master Tuilevuka in **Jaureguy v Sen** (supra), I now turn to analysis the evidence and materials presented before me by the parties with the applicable laws and provisions.
 12. In view of the respective affidavits and the submissions of the parties, it is my opinion that the main contentious issue is the relevancy of the documents sought for to be

discovered by the Defendant. Besides that, it appears that the parties have no much disparity over other issues relating to this application.

13. Bert L.J in **Compagnie Financiere du Pacifique v Peruvian Guano Co** (1882) 11 Q.B.D. 55) has expounded the test of discoverability of a document, where his lordship found that:

“it seems to me that every document relates to the matters in question in the action, which not only would be evidence upon any issue, but also which, it is reasonable to suppose, contains information which may –not which must- either directly or indirectly enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary. I have put in the words “either directly or indirectly” because, as it seems to me, a document can properly be said to contain information which may enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary, if it is a document which may fairly lead him to a train of inquiry, which may have either of these two consequences”

14. The principles expounded by Bert LJ in **Compagnie Financiere du Pacifique v Peruvian Guano Co** (supra) has approved and adopted in **A.B.Anand (Christchurch) Ltd v ANZ banking Group Limited.**

15. The Plaintiffs’ objections for this Summons are mainly constitute on the ground that the claim of the damages is only for the loss of farm product and not for the loss of profit due to the alleged negligent act of the Defendant. Wherefore, the Profit and Loss account and Tax returns are not relevant to the fair disposal of this dispute between the parties.


16. Meanwhile, the Defendant contended that the profit and income of the Plaintiffs are materially important to assess the damages as they claimed in their statement of claim. However, it appears that Mr. Lei Xu in paragraph seven of his affidavit in support has admitted that the Plaintiffs’ claim of the damages is founded on the loss of the farm crops though the Defendant contended that these documents are relevant for the assessment of the net loss of the Plaintiffs.

17. The Plaintiffs vehemently denied that their claim is based on the loss of their income and profit. It is mainly founded on the loss of their farm product due to the flood. In view of these findings, I am of the view, that the documents pertaining to the Plaintiffs' profit and loss and income tax returns are not materially necessary to the fair disposal of this action. I accordingly hold that the document sought from to be discovered do not fall with the definition enunciated by Bert L.J in Compagnie Financiere du Pacifique v Peruvian Guano Co (supra). I accordingly make following orders that;

- i. The Summons for specific discovery filed by the Defendant on the 23rd of January 2014 is hereby refused and dismissed,
- ii. Plaintiffs are granted cost of \$1200 assessed summarily,

Dated at Suva this 12th day of September, 2014.




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R.D.R. Thushara Rajasinghe
Master of High Court, Suva