

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION AT LAUTOKA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 106 OF 2016**

**BETWEEN** : **SHAVEENA KUMARI** of Jinnu Road, Lautoka, Domestic Duties.

**PLAINTIFF/APPLICANT**

**A N D** : **IFTIKAR IQBAL AHMED KHAN** of Lautoka, Barrister & Solicitor, operating as **IQBAL KHAN AND ASSOCIATES** Barristers and Solicitors, Lautoka.

**1<sup>ST</sup> DEFENDANT/1<sup>ST</sup> RESPONDENT**

**A N D** : **SHAH NEWAZ KHAN** of Lautoka, Senior Law Clerk to **IQBAL KHAN AND ASSOCIATES** Barristers and Solicitors, Lautoka.

**2<sup>ND</sup> DEFENDANT/2<sup>ND</sup> RESPONDENT**

**Appearances** : Mr Zoyab S. Mohammed for Plaintiff/Applicant  
: 1<sup>st</sup> Defendant/1<sup>st</sup> Respondent in Person  
: Non-appearance for 2<sup>nd</sup> Defendant/2<sup>nd</sup> Respondent

**Date of Hearing** : 10 April 2017

**Date of Ruling** : 3 July 2017

## **R U L I N G**

### **Introduction**

[01] This ruling concerns an application seeking leave to serve interrogatories.

[02] By summons filed 25 January 2017 in conjunction with an affidavit sworn by the Plaintiff ("the application"), the Plaintiff seeks to serve

interrogatories on the Defendants. The interrogatories the Plaintiff intends to serve includes:

- (i) *Was Prema Wati Nath present in the office of the 1<sup>st</sup> Defendant on the 15<sup>th</sup> April, 2011?*
- (ii) *How was the Sale and Purchase Agreement dated 10<sup>th</sup> February, 2011 between the Plaintiff and Prema Wati Nath sent to Prema Wati Nath for her indorsement?*
- (iii) *When was the Sale and Purchase Agreement dated 10<sup>th</sup> February, 2011 sent to Prema Wati Nath for her indorsement?*
- (iv) *When was the transfer dated 15<sup>th</sup> April, 2011 between the Plaintiff and Prema Wati Nath sent to Prema Wati Nath for her indorsement?*
- (v) *How was the transfer dated 15<sup>th</sup> April 2011 between the Plaintiff and Prema Wati Nath sent to Prema Wati Nath?*
- (vi) *When was the Sale and Purchase Agreement dated 10<sup>th</sup> February, 2011 between the Plaintiff and Prema Wati Nath received back into the office of the 1<sup>st</sup> Defendant?*
- (vii) *When was the transfer document dated 15<sup>th</sup> April, 2011 between the Plaintiff and Prema Wati Nath received into the office of the 1<sup>st</sup> Defendant?*
- (viii) *What is the address for service of the Sale and Purchase Agreement dated 10<sup>th</sup> February, 2011, on Prema Wati Nath of Surrey, Canada.*
- (ix) *What is the address for service of the transfer document, dated 15<sup>th</sup> April 2011 on Prema Wati Nath of Surrey, Canada?*
- (xi) *When did Prema Wati Nath sign the Sale and Purchase Agreement dated the 10<sup>th</sup> February, 2011?*
- (xii) *When did Prema Wati Nath sign the transfer document, dated 15<sup>th</sup> April, 2011?*
- (xiii) *Was Prema Wati Nath present in the office of the 1<sup>st</sup> Defendant at any time between the month of January, 2011 and December, 2011?*
- (xiv) *How was the Original/Copy of Housing Authority Sublease No.189954 received into the office of the Defendants?*

(xv) *Where is the Original Housing Authority sublease No.189954 now?*

(xvi) *If the Defendants do not have in their possession the Original of Housing Authority Sublease No.189954 when did they part possession with the same?*

(xvii) *If the Defendants parted possession with the Original Housing Authority Sublease No. 189954, when did they do so and to whom was it released.*

[03] The application is made pursuant to Order 26 Rule 1 of the High Court Rules ("*the HCR*").

[04] The Defendants oppose the application.

[05] At the hearing of the application, both parties agreed that the issue could be settled through written submissions. Accordingly, both parties have filed their respective written submissions.

### **Background**

[06] The first Defendant is the legal practitioner at Lautoka and the second Defendant is the Senior Clerk to the first Defendant. The Plaintiff intended to purchase a property from a Prema Wati Nath of Surrey, Canada for agreed purchase price of \$12,000.00. The Defendants accordingly prepared the Sale and Purchase Agreement and the transfer papers. The Plaintiff alleges that she paid a sum of approximately \$37,000.00 and when queried as to why the sum is excess of \$12,000.00 was required, the Defendants represented to the Plaintiff that the sale price had escalated. The Plaintiff has brought this action against the Defendants claiming among other things a sum of \$37,000.00 and general and punitive damages for fraudulent, deceptive and misleading conduct. The Defendants denies the claim and seek dismissal of the action with costs. The matter has been set down for trial on 31 July

2017. The Plaintiff in the meantime seeks leave to serve interrogatories on the Defendants.

### **The Law**

[07] The relevant law that deals with interrogatories is Order 26 of the HCR, which provides:

1. (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.*

*(2) A copy of the proposed interrogatories must be served with the summons, or the notice under Order 25, rule 7, by which the application for such leave is made.*

*(3) On the hearing of an application under this rule, the Court shall give leave as to such only of the interrogatories as it considers necessary either for disposing fairly of the cause or matter or for saving costs; and in deciding whether to give leave the Court shall take into account any offer made by the party to be interrogated to give particulars or to make admissions or to produce documents relating to any matter in question.*

*(4) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) shall be disallowed notwithstanding that it might be admissible in oral cross-examination of a witness.*

### **Discussion**

[08] The Plaintiff applies for an order giving her leave to serve on both the Defendants requiring them to answer the proposed interrogatories on affidavit within such period as may be ordered by the court.

[09] The Court shall give leave as to such only of interrogatories as it considers necessary either for disposing fairly of the cause or matter or for saving costs (See O.26, r.1(3)).

[10] As the party to be interrogated, the Defendants did not make any offer to give particulars or to make admissions or to produce documents relating to any matter in question.

[11] The Defendants submit that the Plaintiff's intention to file interrogatories is to seek evidence and prepare her case and that is not allowed because her real intention is to question the credit of the Defendants. They cite the Supreme Court Practice [1979] Vol.1 (page 443), where it is stated that:

*"Interrogatories which relates solely to credit are not allowed-(see the words of the rule: 'shall be disallowed notwithstanding that it might be admissible in oral cross-examination of a witness'..."*

[12] On the other hand, the Plaintiff submits that all questions are legitimate and factual and do not impact upon the liability or otherwise of the Defendants.

[13] "Interrogatories are permitted provided they are relevant to the facts in issue or relevant to the existence of facts in issue. They are admissible which go to support the Applicant's case or to impeach the Respondent's case. Interrogatories are only allowed if they are necessary for disposing fairly of the case or for saving costs, and not allowed which relate solely to the evidence the party intends to adduce. Allowing of interrogatories is a discretionary matter"-per Shameem J in *Hao & Other v A Team Corporation Limited & Other* [1999] HBC 346/98 (2 September 1999).

[14] The Plaintiff's claim stems from a Sale and Purchase Agreement ("the Agreement"). The Agreement and subsequent transfer documents were prepared by the Defendants. These documents suggest that the Vendor

resided in Canada at the time of execution. The proposed interrogatories intend to get answers from the Defendants how and when the Vendor's signatures to the documents were obtained. It also seeks the address of the Vendor in Canada and answers as to how they obtained the original/copy of the Housing Authority Sublease No.189954.

### **Conclusion**

[15] The proposed interrogatories are, in my opinion, relevant to the facts in issue or relevant to the existence of the facts in issue. They are relating to the matter in question between the Applicant (the Plaintiff) and the Respondents (the Defendants) in the action. The answers sought through the interrogatories fall within the exclusive knowledge of the Defendants. The proposed interrogatories do not relate solely to credit. I would, therefore, incline to exercise my discretion in favour of the Applicant. I accordingly grant leave to the Plaintiff to serve the proposed interrogatories on the Defendants. I also order the Defendants to answer the interrogatories on affidavit within 7 days of the date of service of the proposed interrogatories. If the Defendants fail to comply with this order, the defence will be struck out and judgment will be entered accordingly. The Court is empowered to make this unless order pursuant to O.26, r.6, HCR. The costs of this application shall be in the cause.

### **The Result**

- i. Leave granted to the Plaintiff to serve interrogatories on the Defendants as proposed.

- ii. The Defendants are required to answer the interrogatories within seven (7) days of the date of the service of the proposed interrogatories on the Defendants or on their solicitors.
  
- iii. Costs shall be in the cause.

*M. H. Mohamed Ajmeer*  
*3/7/17*

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**M. H. Mohamed Ajmeer**

**JUDGE**

**At Lautoka**

**03 July 2017**

Solicitors:

For Plaintiff: M/s Fazilat Shah Legal, ~~Barristers~~ & Solicitors

For first Defendant: Appears in person

For second Defendant: Non-appearance

