

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

CIVIL ACTION NO.: HBC 251 of 2013

**BETWEEN : THE ISLANDER GROUP OF COMPANIES
LIMITED**
PLAINTIFF

AND : LE GROUP des INSULARIES LIMITED
FIRST DEFENDANT

: CHRISTIAN JOGODZINSKI
SECOND DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Ms. M.Rakai [Sherani & Co]
FIRST DEFENDANT : Mr J Liginivai [Munro Leys]
SECOND
DEFENDANT : Mr. Solanki [Solanki Lawyers]
RULING BY : Acting Master Ms Vandhana Lal
EXTEMPORE
DELIVERED ON : 04 April 2022

EXTEMPORE RULING

1. The Plaintiff on 30th March 2022 filed an application seeking court's leave to file a supplementary affidavit verifying the Plaintiff's list of documents.
2. In support of the application, the Plaintiff has filed an affidavit sworn by Aleleia Daucakacaka a Legal Secretary.

3. The First Defendant's counsel has taken objection to the use of the affidavit on the grounds it is deposed by a Legal Secretary and relied on the Supreme Court decision of **Paul v Director of Lands a Supreme Court Civil Appeal CBV 18 of 2019**.
4. In the said case the Honorable Chief Justice has outlined guidelines to be followed when an affidavit is signed by third parties including Law Clerk/Litigation Executors/Litigation Clerks and these are:
 - i. *Must be authorized in writing by the that party to depose such affidavit;*
 - ii. *Must depose why the director of the company cannot depose the affidavit.*
 - iii. *Not depose affidavit on basis of information or belief but on facts the deponent has knowledge of with exception to affidavit filed in respect of application for summary judgment; Order 86 application; affidavit filed pursuant to Order 38 Rule 3 of High Court Rules.*
 - iv. *Can depose affidavit in support of or in opposition of interlocutory application on basis of the information received which they believe to be true and must disclose the source of such information.*
5. Ms Daucakacaka is a legal secretary employed by the Plaintiff's solicitors firm.

Annexure 1 is copy authority by Christian Jogodzinski a company director with the Plaintiff company who has authorized the deponent to execute the said affidavit though no reasons are provided why he himself could not depose the affidavit.

6. This is an interlocutory application hence I will allow the use of the affidavit in support of the application. Furthermore the affidavit basically gives background of the proceedings which are facts.
7. On the issue of allowing the Defendant to respond to the application.

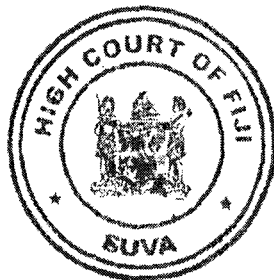
The Defendant's counsel states the application is contentions and all relevant document ought to have been disclosed earlier. The Plaintiff ought to explain where these documents were and why they were not disclosed earlier.


8. **The Supreme Court Practice (1993 Ed) at paragraph 24/1/2** at page 432 discloses about the right to discovery and explains that *"Discovering of document between parties to an action with pleadings is automatic upon the close of pleadings and may in such a case and in any other cause or matter be ordered under Order 24 Rule 4"*.
9. It further goes on to explain on the continuing obligation to give discovery and reads:
"Although one reading of Order 24 Rule 1 may suggest that discovery need to be given only of documents which have come into a party's possession before the date of his list of documents, this is not the limit of a party's obligation to give discovery imposed by the rule. The obligation is general, and requires the disclosure of all relevant document whenever they may come into a party's possession. This requirement is supported by the linked principle that a party must not seek to take his opponent by surprise (Order 18 Rules 8 and 9) and that he must not, by withholding relevant document, mislead his opponent or the court into believing that the statement in his list that he has given fall discovery continues to be true" (Mitchell v Darley Colliery Co. (1884) (ab & EE11.215)."
10. This matter is not at the trial stage. In fact it is far from trial as the parties are still sorting out the pretrial conference minutes.
11. I do not find any prejudice caused to the First Defendant if the Plaintiff is allowed to file its supplementary affidavit.
12. They have been put on notice by the Plaintiff's solicitors regarding these documents.

13. I find it prudent that parties move on to see the matter proceeds for trial.
14. I am allowing the Plaintiff to file and serve its supplementary affidavit verifying list of documents.

This should be filed and served by 22nd April, 2022 4pm. A scan copy can be filed for now with original before the hearing date of the matter is assigned.

15. Parties are to reconvene pretrial conference and file a minute by 13th May 2022 4pm.
16. If direction are not complied with unless orders will be made.
17. 18th May 2022 at 10am to check on compliance.




Vandhana Lal [Ms]
Acting Master
At Suva.

04 April 2022

1. Sherani & Co, Solicitors for the Plaintiff;
2. Munro Leys, Solicitors for the First Defendant;
3. Solanki Lawyers, Solicitors for the Second Defendant.