

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

CIVIL ACTION NO. HBC 88 OF 2019

BETWEEN : **BUILDING SOLUTIONS FIJI LIMITED** **PLAINTIFF**

AND : **SHARMA MUSIC CENTRE LIMITED** **DEFENDANT**

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCES : Mr. S. F. Koya for the Plaintiff
Mr. J. Sharma for the Defendant.

DATE OF HEARING : 14th March, 2023

INTERLOCUTORY RULING

1. This is the written form of my extempore Ruling, with the reason for it, pronounced on the 14th March, 2023, allowing the Supplementary List of Documents that had been filed on behalf of the Defendant on 3rd March, 2023, together with a verifying Affidavit sworn by SUSHIL SHARMA, Director of the Defendant Company.
2. Learned Counsel for the Plaintiff objected the admission of the same, citing various reasons, particularly, that it is a belated one, it has been filed after the closure of the Plaintiff's case, Plaintiff's witnesses are deprived of the benefit of having their say on those documents, and if those documents are admitted, it will cause serious prejudice to the Plaintiff's case.
3. Learned Counsel for the Defendant submitted in turn that the list in question was filed and served well in time, giving sufficient Notice for inspection of those documents, and the Solicitors for the Plaintiff have not availed of the opportunity to inspect them which are in the custody of the Defendant's Solicitors. Counsel argues that no prejudice would be caused to the Plaintiff by admissions of those documents.
4. The record reveals that two days trial initially being fixed for 15th and 16th September, 2022, the entirety of those two days had to be dedicated for the 3 witnesses for the Plaintiff and with the consent of the then Counsel for the plaintiff, fresh 3 dates, for further trial on 14th to 16th March, 2023, were fixed for the defence case.
5. It is also on record that when re-fixing the defense's case on 16th September, 2022, Counsel for the Defendant has made a verbal Application to file a supplementary list of

documents and the Court has accordingly granted leave by stating "**Further list can be filed before the next trial date**". This shows that the Plaintiff's solicitors were duly put on notice that the Defendant will be filing a supplementary list.

6. Though, the said list was filed 10 days prior to further trial on 3rd March, 2023 and subsequently served with Notice to inspect (7 days), the Plaintiff's Solicitors had not taken the trouble to inspect the intended Documents.
7. The proposed supplementary list is consists of documents such as ;
 - i. **Volume 1** - Pre- Contract & Post Contract project documentation,
 - ii. **Volume 2**- Oceanic Designs & Building Consultants Building Designer's Site Inspection Reports,
 - iii. **Volume3**-Oceanic Designs & Building Consultants Foundation & Footing, Ready-Mix Concrete Pouring Reports.
 - iv. **Volume 4**-Oceanic Designs & Building Consultants Ground Floor Ready-Mix Concrete Pouring Reports.
8. In my view, the Plaintiff being a construction Company, must undoubtedly be familiar with these kinds of documents and none of the contents therein could, possibly, take the Plaintiff by surprise or prejudice them, provided they are given some time for them to inspect the contents and familiarize with them to be ready, before the documents are put to the Defendant's witnesses at the trial.
9. In fairness to the Plaintiff, it also can be kept at liberty, if needed, to call evidence in rebuttal, and thus the prejudice, if any, could be avoided. Further, if this ruling is going unfavorable to the Plaintiff in terms of costs, the Plaintiff can be appropriately compensated by making an order for the costs, as well.
10. The Pre Trial Conference had been held and the minutes of it has been filed 19th March, 2020, wherein both the parties have agreed to file their own bundle of documents subject to cross examination. (Vide page 6 of P.T.C.)
11. The Defendant's supplementary Affidavit, along with the list of the documents intended to use at the trial, which is the subject of this order, was filed 10 days prior to the date of further trial.
12. The ultimate purpose of a trial is to ascertain the truth. It is the means by which the court proceeds to separate fact from fiction. As much as surgical tools and procedures are updated and improved with the advancement of technology so should the rules and procedures applicable to trial proceedings be utilized by Court? Relevancy is such a tool. It should not be too sharp or too blunt. At the beginning of a trial what might at a glance appear to be irrelevant may well be most relevant in the course of a trial. What a witness may say at least under cross examination cannot always be fathomed before the trial.

13. If documents are ruled out before the trial, they may not be led again at the trial depriving the court of knowing the contents therein. Both parties must know what documents they have to face at the trial subject to a few exceptions. The Plaintiff is now well aware of the Documents set out in the Supplementary List of the Defendant. Plaintiff is ought not to be surprised by the Defendants Supplementary list filed on the 3rd March, 2023 and served on 7th March, 2023.
14. The Court has not had the opportunity of perusing the intended documents before it shuts the door fully. Individually the contents of the documents need to be seen and ruled as to their relevancy and admissibility, whether they need to be proved or not. The only exception is the Agreed Bundle of Documents. The relevant provisions of the Civil Evidence Act (2002) shall be considered as and when the particular documents are moved to be marked as exhibits during the trial and not on affidavits prior to the trial.
15. Further, the Court is of the view that the further trial can commence on 15th March, 2023 tomorrow, in order to avoid any surprise to the Plaintiff and facilitate the Plaintiff's Solicitors to inspect the intended documents in the Supplementary Affidavit.
16. Therefore, my decision on the Supplementary list of documents is that each and every documents thereof to be ruled upon its marking, subject to cross examination, and proved or admitted or disregarded, individually during the course of the trial.

ORDERS OF COURT;

- 1) The Supplementary list of Documents filed by the Defendant's Solicitors is hereby allowed.
- 2) Order on costs reserved.
- 3) Further trial shall resume on 15th March, 2023.



A.M. Mohamed Mackie
Judge

At High Court Lautoka this 14th day of March, 2023.

SOLICITORS:

For the Plaintiff: Siddiq Koya Lawyers
For the Defendant: Janend Sharma Lawyers