

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 11 of 2021

BETWEEN: **AMY STREET PHARMACY PTE LIMITED** a limited liability company
having its registered office at Damji & Sons Building, 271 -271 Main
Street, Queens Road, Nadi, Fiji.

PLAINTIFF

AND: **SUVA PRIVATE HOSPITAL PTE LIMITED** a limited liability company
having its registered office at Level 7, BSP Life Centre, Thompson
Street, Suva, Fiji.

1ST DEFENDANT

AND: **OCEANIA HOSPITALS PTE LIMITED** a limited liability company having
its registered office at Level 7, BSP Life Centre, Thompson Street,
Suva, Fiji.

2ND DEFENDANT

BEFORE: **Hon. Mr Justice Vishwa Datt Sharma**

COUNSEL: **Ms. Maharaj K** for the Plaintiff
Mr. Singh R. for the Defendants

Date of Decision: **27 March, 2025 @ 9.30am**

DECISION

[Specific Discovery]

Introduction

1. The Plaintiff filed a Summons for Specific Discovery coupled with the affidavit in support of Kavita Raniga and sought for the following:
 - a) That the Defendants do within 14 days disclose by Affidavit all documents including correspondence, draft agreements and executed agreements evidencing the acquisition of an interest by MIOT (hereafter to mean Madras Institute of Orthopedics' and Traumatology) in the Suva Private Hospital.
 - b) That all documents including but not limited to correspondence and draft agreements in respect of a joint venture entered into between Suva Private Hospital and South Pacific Hospital known as Oceania Hospitals".
 - c) That all submissions made including correspondence to the Ministry of Health and the then Minister of Health Hon. Rosie Akbar seeking an amendment to the Pharmacy Act to allow private health provider to own and operate their own pharmacy.
 - d) That all correspondence and applications made to the Pharmacy Provisions Board of Fiji for the Defendants to be issued a pharmacy licence in the period 2017 - 2024 inclusive and for the further provision of all correspondence between the Defendants as Applicants and the correspondence received the Pharmacy Board in respect of all such applications together with all decisions made in response to the applications made by the Defendants and ultimately determined by the Pharmacy Board of Fiji.
 - e) That all documents relating to or concerning the decision made to relocate the Plaintiff's pharmacy from inside the Suva Private Hospital to the area near to or adjacent to the car park including all Board Minutes, agendas for such Board Meetings, correspondence and discussion papers to be tabled at Board Meetings concerning the issue of relocating the Plaintiff's pharmacy from inside the Suva Private Hospital to an area outside.
 - f) That the Plaintiff disclose by Affidavit copies of all feasibility reports and/or production forecast and/or projected expenses and/or budget forecasts and profit and/or losses and/or expenses and projections of income and projection commissioned and/or undertaken by or provided to the Defendants or any of its group or related companies prior to approving or commencing the decision to relocate the Plaintiff's pharmacy outside of Suva Private Hospital and the establishment of the Defendant's private pharmacy within the Suva Private Hospital.
 - g) That the Defendants do, within 14 days, disclose by Affidavit copies of all feasibility reports and/or projection forecasts and/or projected expenses and/or budget forecast of profit and loss together with all financial records relating to the conduct and operation of the pharmacy

known as Oceania Hospitals Pharmacy contained within the precincts of the Suva Private Hospital from date of its establishment to date.

- h) That the discovery as sought in respect of the specific orders above be provided by and verified upon Affidavit with a list of documents filed and an affidavit in support within 14 days of the order as made by this honourable Court.
2. The application was made, pursuant to *Order 25 and Order 24 Rule 7, 10 and 12 of the High Court Rules, 1988*.
 3. The Defendant filed an affidavit in opposition deposed by Ronlyn Sahib.
 4. The Plaintiff failed to furnish this court with any written submissions, and failed to adhere to the Court Directions whilst the Defendants furnished Court with their comprehensive written submission instead.

Plaintiff Contention

5. Discovery is sought in respect of matters that are particularly relevant to and have arisen upon the Amendments made to the Plaintiff's Statement of Claim.
6. Issues raised concerning the anti - competitive conduct together with breach of contract and misleading and/or deceptive conduct undertaken by the Defendants, the matters complained of in the Plaintiff's Statement of Claim which is now amended.
7. Thu, the Plaintiff is seeking discovery from the Defendants that are now in issue between the parties to the proceedings.

Defendants Contention

8. The Defendant objected to the Plaintiff's application.
9. That the Application is without merit and not in accordance with the High Court Rules, 1988 rather involves point of law.
10. Documents requested as discovery is not relevant to the proceedings.
11. Kavita Raniga's affidavit in support (filed by the Plaintiff) fails to show how the documents sought are relevant to the current proceedings.
12. Seek Plaintiff's application to be dismissed with costs.

Analysis and Determination

13. *Order 24, Rule 7 of the High Court Rules 1988* outlines the requirements for seeking such an order.

14. However, **Order 24 rule 8 of the High Court Rules 1988** further provides that discovery to be ordered only if necessary.

8. On the hearing of an application for an order under rule 3 or 7, the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

15. The Supreme Court Practice (1999) at p 471 24/7/2 provides guidance in the procedure for discovery:

".....under the present rule an application may be made for an affidavit as to specific document or classes of documents. This must be supported by an affidavit stating that in the belief of the deponent the order party has or has had certain specific documents which relate to a matter in question. But this is not sufficient unless a prima facie case is made out for (a) possession, custody or power, and (b) relevance of the specified documents (Astra National Productions Ltd v. Neo Art Productions Ltd [1928] W.N.218). This case may be based merely on the probability arising from the surrounding circumstances or in part on specific facts deposed to, See too Berkeley Administration v. McChelland [1990] F.S.R. 381 where at p.382 the Court restated the principles as follows: (1) There is no jurisdiction to make an order under RSC, O.24, r.7, for the production of documents unless (a) there is sufficient evidence that the documents exist which the other party has not disclosed: (b) the document or documents relate to matters in issue in the action: (c) there is sufficient evidence that the document is in the possession, custody or power of the other party. (2) When it is established that those three prerequisites for jurisdiction do exist, the court has a discretion whether or not to order disclosure. (3) The order must identify with precision the document or documents or categories of document which are required to be disclosed...."

16. Under **Order 24 rule 7(1) read with and (3) of the High Court Rules, 1988** only requires an affidavit to be filed, not for document to be produced.
17. A party seeking an order for specific discovery is required to provide the necessary averments as to why they believe the documents are relevant and in the possession and/or custody of the other party to the proceedings.
18. The Plaintiff attempted to provide an averment at paragraph 3 and 4 in her 5 paragraphs affidavits in support which lack any specificity that sets the foundation for what is in fact required under **Order 24, rule 7 (3) of the High Court Rules 1988**.
19. I refer to the case of **Chahan Engineering Pte Ltd v Coastal Development Ltd [2021] FJHC 242** at paragraph 5 which dealt with the **test for specific discovery** and reads:

"[5] The requirements, a party who seeks specific discovery of documents,

has to satisfy as have been discussed in many previous authorities and the learned counsel for the defendant has cited the following previous decisions:

Singh v Minjesk Investment Corporations Ltd & Anor Civil Action No. 148 of 2006.

(i) *Identify clearly the particular document or documents or class of documents that he seeks from to be discovered by the opposing party (see Order 24 Rule 7 (1)).*

(ii) *Show a prima facie case that the specific document or class of documents do in fact exist or have existed (see Order 24 Rule 7 (1)).*

(iii) *Establish that these documents are relevant in the sense that they relate to the matter in question in the action. In other words, 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 22 30 January 1997).*

*It is important to note that whether or not any particular document is admissible or inadmissible is immaterial to its discoverability. It is enough if the document is likely to throw some light on the case (see **Volume 13 paragraph 38 of Halsbury's Laws of England-4th Edition**) page 34 cited in Singh v Minjesk*

(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 document from one who ordinarily has it in fact) of the opposing party (see Order 24 Rule 7 (3).3.4).*

20. The allegations in the Original claim and amended claim are focusing on:

- (i) Purported breach of FCCC Act, and
- (ii) A purported claim of Exclusivity of pharmacy services in the building.

21. Further, the documents requested for in their current specific discovery application:

- (i) do not relate to the matters in issue in this action whereby the Plaintiff's Statement of claim was amended,
- (ii) MIOT is not a party to the proceedings and not mentioned in the

- Plaintiff's pleadings, However, this relates to a private agreement between two entities and has nothing to do with the Plaintiff, and
- (iii) There are no allegations in the pleadings specially related to any issues by the Plaintiff concerning the relocation of the Plaintiff's pharmacy.
22. The Plaintiff's purported request for specific discovery in terms of the documents is sought from the group or related companies. Companies are separate entities and the Plaintiff is not entitled to receive any documents from companies that are not party to these proceedings per se.
23. There is insufficiency of evidence by the Plaintiff before Court to show the relevance of the requested specific discovery.
24. I find on the balance of probabilities that the Plaintiffs have failed to satisfy to this Court the basic requirements for specific discovery under the High Court Rules 1988.
25. In the like, the Plaintiff's application for specific discovery fails and is accordingly dismissed in its entirety.

Costs

26. The application proceeded to full hearing with the Defendant only furnishing Court with written submissions whilst the Plaintiff's failed to furnish any written submissions rather made a very short argument with oral submissions on no concrete basis.
27. The Plaintiff to pay the Defendants a sum of \$1,000 each (total of \$2,000) as summarily assessed costs within 14 days timeframe.

Orders

- (i) The Plaintiff's application seeking for specific discovery fails and is dismissed in its entirety.
- (ii) The Plaintiff to pay the Defendants a total of \$2,000 [\$1,000 each] as summarily assessed costs within 14 days timeframe.

Dated at Suva this 27th day of March ,2025.



VISHWA DATT SHARMA
PUISNE JUDGE

Cc: Capital Legal, Suva
Munro Leys, Suva