

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. **HBC 296 of 2020**

Between : **SEFTON ERASITO** t/a **QUANTECH PACIFIC** of Lot 15 Kaunitoni Road, Delainavesi, Lami, in the Republic of Fiji Islands.

Plaintiff

And : **BRIGHTON HOLDINGS (FIJI) LTD** t/a **CLEARVIEW ARCHITECTS** of Lot 51 Uca Place, Makoi, Nasinu, in the Republic of Fiji Islands.

Defendant

Representation:

Plaintiff: Mr. S. Leweniqila (Toganivalu Law)

Defendant: Ms. L Vaurasi & Ms. T Waqanika (Waqanika Law).

Date of Hearing: 20th January 2026

Ruling

A. Introduction

[1] The lawyers for the Defendant filed summons seeking, amongst other things, (a) leave to amend statement of defence to Plaintiff's amended statement of claim, (b) plaintiff and defendant file further and better list of documents which are in their possession, custody or power, (c) file affidavit verifying the list, specifying in the list the said documents it has or have been but are now not in their possession, custody or power, stating when they parted with the same, and in whose possession they now are, and (d) within 7 days make available copies of such documents contained in further and better list for inspection. In simple terms this application seeks *discovery* of specific documents. The other issues in the summons were dealt with.

[2] The summon was filed pursuant to Order 3 rule 4, Order 20 rule 5, **Order 24 rule 7** and Order 35 rule 3 of the High Court Rules 1988. It was filed with an affidavit in support of Ulaiasi Baivatu.

[3] An affidavit in opposition of Sefton Erasito was filed.

B. The Law

[4] The law on discovery and inspection is set out in Order 24 of the High Court Rules 1988. It is comprehensive. Order 24 Rule 7 deals with specific discovery.

C. The Submissions

[5] The submission for the Defendant is that in the Plaintiff's affidavit verifying list of documents there is failure to disclose all necessary documents and or correspondence. Reference is made to a letter dated 17th June 2014 which addresses the sub-contractor who prepared the bill of quantities.

[6] The Defendant also submitted that the Plaintiff failed to discover any documents which substantiate his performance of the contract. They also seek that the Plaintiff discover his medical records for the years 2014 to 2017.

[7] The submission for the Plaintiff was that having brought the action they will need to provide evidence. They will not hold documents. If the evidence is lacking the Defendant can "attack at the hearing".

D. Determination

[8] Order 24 Rule 7 of the High Court Rules 1988, provides as follows:

" 7.-(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 [or her] possession, custody or power, and if not than in his [or her] possession, custody or power, when he [or she] parted with it and what has become of it.

(2) An order may be made against a party under this rule notwithstanding that he [or she] 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 [or her] 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] In **Berkeley Administration Inc and Ors v. McClelland and Ors [1990] All ER 958, FSR 381** at 382 the principles governing specific discovery are set out 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 documents relates 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 exists, the Court has jurisdiction 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, for otherwise the person making the list may find himself/herself in serious trouble for swearing to a false affidavit even though doing her/his best to give an honest disclosure.”*

[10] The principles set out in **Berkeley** have been applied by our Courts.

[11] The Defendant in his application and affidavit has not identified any specific document that exists and that has not been disclosed. The documents must be clearly identified. It is not enough to refer to some document without clearly outlining what that document is. The document details must be provided. It is specific discovery. The specifics of the documents must be provided.

[12] The Defendant is also seeking the Plaintiff’s medical records for years 2014 to 2017. The medical reports do not relate to the matters in issue. The issues between parties relate to an agreement and breaches of those agreements. The Plaintiff claims that the Defendant breached the agreement by failing to pay him \$89,975.00 for quantity surveying work rendered and completed by the Plaintiff.

[13] In short, the Defendant has not specifically identified the documents relevant to the matter and also whether all the documents sought to be discovered are in possession of the Plaintiff.

E. Court Orders

- (a) The Defendants application seeking specific discovery is refused.
- (b) The parties will bear their own costs.

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Hon Justice Chaitanya S C A Lakshman
Puisne Judge
16th February 2026

