

N THE HIGH COURT OF FIJI
CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No. HBC 191 OF 2022

BETWEEN: **VATULELE HOTELS PTE LIMITED** a duly incorporated company having its registered office at Lot 2 Nadi Bay Road, Wailoaloa in the Republic of Fiji.

PLAINTIFF

AND: **HOME FINANCE COMPANY PTE LIMITED** trading as HFC Bank, a duly incorporated company having its registered office at 371 Victoria Parade, Suva in the Republic of Fiji.

FIRST DEFENDANT

AND: **VATULELE ISLAND BEACH ESTATES PTE LIMITED** a limited liability company having its registered office at Vama Law, 3 Verrier Road, Namadi Heights, Suva. Fiji.

SECOND DEFENDANT

AND: **REGISTRAR OF TITLES** having its registered office at Ground Floor, Suvavou House, 409 Victoria Parade, Suva in the Republic of Fiji.

THIRD DEFENDANT

Date of Hearing : **2 October 2025 and 26 November 2025**
For the Plaintiff/Respondent : **Mr. Kalim D.**
For 1st Defendants : **Ms. Devi V.**
For 2nd Defendants/Applicants : **Mr. Clarke W. and Mr. Koya S.**
Before : **Waqainabete-Levaci, SLTT, Puisne Judge**
Date of Ruling : **20 February 2026**

RULING

*(APPLICATION FOR SPECIFIC DISCOVERY:
Order 24 r 7 of High Court Rules)*

BACKGROUND

1. The substantive application is a Claim against the 1st and 2nd Defendant for allegedly conveying land and mistakenly omitting 29 sub-leases of land after the Plaintiff and 1st Defendant had entered into a Sale and Purchase Agreement. Furthermore the Plaintiff Claimed that the 1st and 2nd Defendant had breached sections 74, 75 and 79 of the Fiji Commerce Commission Act by engaging misleading and deceptive conduct constituting a future matter and failing to include the omitted sub-leases in the claim for rectification and also aiding and abetting each other to omit the land thereby depriving the plaintiff from their contractual right and entitlement under the Sale and Purchase Agreement.
2. Both the Plaintiff and 2nd Defendant are claiming rights to the ownership of the titles of the omitted sub-leases. The 2nd Defendant as the bona fide purchaser and the plaintiff as of an equitable right.
3. The 2nd Defendants have therefore filed a Summons seeking for Specific Discovery of 5 documents for the following orders:
 - (i) The Plaintiff within 14 days by Affidavit disclose and make available copies to the Second Defendant for the inspection of all correspondences and communications between the Plaintiff and/or Mr. Jay Singh and Phillip Toogood of Bayleys Real Estate Fiji concerning the advertised mortgagee sale by HFC of the Vatulele leases and subleases including the Information Memorandum prepared in relation to the said mortgagee sale of Native Lease Nos. 28084 and 28085 and the 10 Subleases namely Native Sublease Nos. 611800, 611801, 611802, 611803, 611804, 611805, 611806, 611807, 611808, and 611812. This is for the period prior to the dates of the documents disclosed.
 - (ii) The Plaintiff do within 14 days by Affidavit disclose and make available copies to the Second Defendant for the inspection of the Plaintiff and/or Mr Jay Singh's tender to Home Finance Corporation and/or Bayleys Real Estate of Fiji in relation to the HFC Mortgagee sale for Native Lease Nos. 28084 and 28085 and the 10 Subleases namely Native Sub Lease Nos 611800, 622801, 611802, 611803, 611804, 611805, 611806, 611807, 611808 and 611812 and/or any subleases for land in Vatulele.
 - (iii) The Plaintiff do within 14 days by Affidavit disclose and make available copies to the Second Defendant for the inspection of all correspondences between Ramesh Patel of R. Patel Lawyers and the Plaintiff and/or Jay

Singh concerning the purchase of Native Leases No 28084 and 28085 and the 10 Subleases Nos. 611800, 611801, 611802, 611803, 611804, 611805, 611806, 611807, 611808 and 611812 both before and after the purchase.

- (iv) The Plaintiff's do within 14 days by Affidavit disclose and make available copies to the Second Defendant for the inspection of Jay Singh and/or Plaintiff's bid to HFC for Native Sublease Nos 611799, 611809, 611810, 611811,611812,611813,611814,611815,611816,611817,611818,611819,611820,611821,611822,611823,611824,611825,611826 and 611827.
- (v) The Plaintiff do within 14 days by Affidavit disclose and make available copies to the Second Defendant for the inspection of all correspondences and drafts of the Sale and Purchase Agreement between the Plaintiff and/or Jay Singh for the sale of Native Leases No 28084 and 28085 and the 10 Subleases Nos. 611800, 611801, 611802, 611803, 611804, 611805, 611806, 611807, 611808 and 611812.

4. After the matter was first called up, parties were then given time to file their Affidavits.

AFFIDAVITS

2nd Defendant/Applicants Affidavit

- 5. The 2nd Defendant/Applicant had deposed a supporting affidavit seeking correspondences between the Plaintiff and Philip Toogood and or Mr. Jay Singh of what they were informed and knew about the advertised mortgagee sale of Vatulele leases and subleases including the Information Memorandum in relation to the mortgagee sale of native leases no. 28084 and 28085 and the 10 subleases No. 611800 up to 611808 and 611812. The Plaintiffs depose that they intend to argue being misled to purchase Native Subleases no 611799, 611809, 611810, 611811, 611812,611813,611814,611815,611816,611817,611818,611819,611820,611821, 611822,611823,611824,611825,611826 and 611827.
- 6. The Plaintiff seeks the Plaintiffs tender to HFC and/or Bayley on purchasing the leases which the Defendants seeks for discovery.
- 7. The Plaintiff also deposes that as solicitors acting for the Plaintiff and Mr. Jay Singh, all due diligence and advice on purchase of the said leases was required to be

discovered as it was also confirmed by an email annexed of the counsel admitting to the Director of the Plaintiff that there was no purchases by the Plaintiff of the said contested leases from HFC.

8. The Plaintiff also deposed that admissions in a letter by the Plaintiffs lawyers to the High Court on 14 December 2021 revealed that the plaintiff had submitted a tender for the contested leases and was unsuccessful as they had bid \$335,000 for the contested leases which was opposed by the 2nd Defendant/Applicants who purchased the contested leases for \$1.5 million and further 4 Native Subleases No 611795, 611796, 611797 and 611798 for \$500,000 from the 1st Defendant.
9. Finally, the Plaintiff believed that the correspondences between the Plaintiff and HFC regarding the Sale and Purchase Agreement would reflect on their knowledge and intentions.

Plaintiffs Affidavit in Opposition

10. He deposed that the correspondences of Philip Toogood and the Plaintiff and or Jay Singh was not necessary in the prosecution of the proceedings.
11. He also deposed that tender and related documents should have been in the possession of the 1st Defendant, HFC or Bayleys as they were recipients of the tenders.
12. The Plaintiff deposes that it has filed the Affidavit Verifying List of Documents pertaining to all documents and it was upon the 2nd Defendant to discover or adduce material it relies upon during the trial.
13. The Plaintiff deposes that the written request by letter from the 2nd Defendant in May 2025 to discover documents did not compel them to produce documents as it had the liberty to do so much earlier in the proceedings and that the 2 month delay was not of the Plaintiffs doing.

2nd Defendants Affidavit in Response

14. The Affidavit in response deposed that the Plaintiff did not deny the existence of copies of correspondences between Phillip Toogood of Bayleys and the Plaintiff and or Jay Singh with the Plaintiff.

9 October 2025 Hearing

15. After receiving Affidavits, the Court affixed the matter for Hearing on 9 October 2025 and at Hearing, the 2nd Defendants argued that the Plaintiff did not deny the existence of correspondences between Phillip Toogood and the Plaintiff as well as advice given by their Counsel R Patel by correspondences pertaining to the Tender to HFC as well as the Sale and Purchase Agreement.
16. Counsel for the Plaintiff sort time to search and talk to their clients on where the documents were pertaining to the application for specific discovery, more particularly correspondences between Philip Toogood and the Plaintiff and between their lawyer R Patel and the Plaintiff pertaining to the tender and Sale and Purchase Agreement qualifying their objections that the documents were still privileged.

24th October 2025 continuation of Hearing

17. On 24th November 2026 the Plaintiffs' Counsel submitted that apart from the emails correspondences listed in the AVL D, there was no other documents in the Plaintiffs possession and that the Lawyer Mr. Patel can be subpoenaed to appear and give sworn evidence pertaining to correspondences between the Plaintiffs, the lawyers and HFC. However, they were still looking for the documents sort.
18. Thereafter the court gave directions for Mr. Jay Singh to file an Affidavit pertaining to the correspondences and affixed the matter for 12 December 2025.

Affidavit of Ganendra (Jay) Mangal Singh

19. Mr. Singh deposed that he was a Director of the Plaintiff and directed Messrs. Patel Sharma to disclose all correspondences from Mr. R. Patel, his former solicitors for the court to determine whether or not they were privileged documents.
20. He also deposed he had appointed Mr. Ritesh Ram as Senior Projects Manager to have conduct of the file when dealing with Messrs. Vijay Naidu. That when Mr. Ritesh Ram was no longer employed with the Plaintiff, he thereafter authorized Mr. Robert Sen.
21. He deposed all documents were disclosed were made available to the 2nd Defendants after the Specific Discovery application was made, even to the point of emailing Mr. Robert Sen.

22. He deposed that Mr. Robert Sen and his staff have looked for the documents diligently in the Plaintiffs company and was unable to locate the documents.
23. He deposed that he had conducted diligent searches on emails and was unable to locate any other correspondences.
24. He deposed any other correspondences were not in his possession and he has attempted to locate all documents with Mr. Ram which were in his possession as requested by 2nd Defendant.

Affidavit in Response by the 2nd Defendant to the Affidavit of Ganendra Singh

25. 2nd Defendant in their Affidavit argued that the Affidavit was evasive as it claimed that Ritesh Ram who had left employment was in possession of the personal emails of the deponent.
26. The 2nd Defendant deposed that there were emails between Ganendra Singh and Philip Toogood of Bayleys and Ramesh Patel before the Plaintiff was created or acquired or owned assets which were later on offer from HFC for sale;
27. The emails would not have been in the possession of Mr. Ram as it was sent and received from the personal emails of Mr. Ganendra Singh.
28. Which also confirmed the knowledge of Mr. Ganendra Singh as to whether the arrangement to the claim is established.
29. 2nd Defendant also deposed it was well within Mr. Singh's powers to retrieve all the correspondences from R Patel lawyers as their clients and from Bayleys Real Estate as purchasing customer. The correspondence between Mr. Singh and Bayley would verify the sublease lots on sale and which sublease lots at Long Beach were included in the sale.

12 December 2025 Directions

30. On having perused the Affidavit filed by Mr. Ganendra Singh, Counsel for the 2nd Defendant had argued that correspondences with Mr. R Patel were not privileged and required to be discovered and that Mr. Singh had confirmed in his Affidavit that it existed but that he could not locate it. That it was upon Mr. Singh to obtain the documents from the Plaintiffs former lawyers, R. Patel, with an Order of the High Court.

31. Counsel for the Plaintiff maintained his argument that although the document did exist, it was not in their possession. He submitted that Mr. R Patel should be subpoenaed at trial. The Plaintiffs were still searching and every effort to locate the documents was getting difficult as confirmed in the Affidavit by Mr. Jay Singh. Although it may have existed at that time, the documents were not in their possession.
32. Court ordered Mr. Singh to obtain correspondences in his possession pertaining to the orders sort for Courts perusal only.

PART C: LAW AND ANALYSIS

33. The Application by the 2nd Defendant/Applicants relies upon the discretionary powers under Order 24 Rule 7 of the High Court Rules to require parties to deliver up any documentary evidence that is in their power or possession or control or what has become of it.
34. As applied by Banuve J in the case of Singh -v- ITLTB [2025] FJHC 460; HBC 27.2020 (8 May 2025) where he stated:

‘11. Order 27, rule 7(3) stipulates that 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 documents or class of documents specified or described in the application, and that it relates to one or more of the matters in question in the cause or matter.

.....

13.2 The correct approach to take in determining an application for specific discovery disclosure is to firstly, identify the factual issues that would arise for decision at trial. Disclosure must be limited to documents relevant to those issues which may be identified by analyzing the pleadings. The purpose of the pleadings is to identify those factual issues which are in dispute and in relation to which evidence can properly be adduced.^[3] The task of identifying whether the issue raised by the Plaintiff in paragraph 6 of the Affidavit in Support filed on 29th April 2025 has been complicated by the Plaintiff not settling facts and issues in a Pre-Trial Conference Minutes.’

35. Hence in determining whether or not to grant the application, the Court must satisfy itself that the documents are relevant to the trial and that the documents are in the possession or control of the Plaintiff.
36. The 2nd Defendant/Applicant has filed his affidavit verifying his belief on the documents in possession or in custody or within his powers and seek that these documents be discovered for the benefit of trial. These include correspondences pertaining to the claim by the Plaintiff relying upon the provisions of the Fiji Competition and Consumer Act. From submissions of parties it is quite clear that the 2nd Defendant intends to consider the intentions, conduct and knowledge of the parties when tendering for the subleases and entering into the Sale and Purchase Agreement.
37. The Plaintiff denies that the documents sort are in the possession at this given time. Furthermore, they argue also that the documents sort are irrelevant to the claim, given that the Agreement was entered between the Defendants and the Plaintiff and not the Real Estate Agent representative, Mr. Toogood.
38. When the Court considered the Statement of Claim, the Claim by the Plaintiff relied upon the provisions of the Fiji Competition and Consumer Act under sections 74, 75 and 79 more particularly on misleading and deceptive conduct and its reliefs sort.
39. The elements of the offence requires the Court to look at the conduct of the offender. Sections 74, 75 and 79 requires the Plaintiff to prove that the Defendants were misleading and making false representations regarding resulting in the Plaintiff relying on that misrepresentation resulting in the sub-leases not being included in the Sale and Purchase Agreement. Section 79 of the Fiji Competition and Consumer Act requires the Court to consider whether the false or misleading representation was made over the price, location and characteristics as well as the use of land and availability of the facilities associated with the said land.
40. Section 75 of the Fiji Competition and Consumer Act requires the Court to consider whether there has been any misleading and deceptive conduct form the Defendants to misrepresent the offer for sale of the said subleases resulting in the Sale and Purchase Agreement being signed without the inclusion of the said subleases.
41. The claim clearly requires the Court to consider the Defendants conduct, promises and correspondence which resulted in the Plaintiff relying on these words for which they now seek the Court to find the Defendants in breach of.

42. The 2nd Defendant relies upon the correspondences as evidence of the knowledge, intention of the plaintiffs pertaining to the Sale and Purchase Agreement and the tender of the said sub-leases.
43. The court finds the correspondences sort are relevant to both the Plaintiff and Defendants cases, more particularly with the evidence they rely upon. The nature of the provisions of sections 75 and 79 of the Competition and Consumer Commission Act requires the court to determine based on the arrangements between the parties and these correspondences are crucial.
44. The Plaintiff argues that the correspondences from their previous Counsel, Mr R Patel are privileged documents.
45. Hammet J in the case of Prasad -v- Singh [1966] 12 FLR 161 (23 September 1961):

‘Communications between a solicitor and his client are indeed privileged in certain circumstances but it is well established that the privilege is that of the client and not the solicitor. In this case Mr. Singh was called as a witness to give evidence on behalf of a person who was at the material time a client. It is clear that as far as the client who called Mr. Singh was concerned, he was waiving the privilege “

46. Walker -v- Khan [2005] FJHC 395; HBC 0167R.1997s(27 October 2025) Jitoko J stated:

The governing principle in a claim for legal professional **privilege** is as stated by Barwick CJ in Grant v. Downs [1976] HCA 63; [1976] 135 CLR 674. At p. 677, he said:

“ ... a document which was produced or brought into existence either with the dominant purpose of its author, or of the person or authority under whose direction, whether particular or general, it was produced or brought into existence, of using it or its contents in order to obtain legal advice or to conduct or aid in the conduct of litigation, at the time of its production in reasonable prospect, should be privileged and excluded from inspection.

In the application of this principle, the fact that the person who produced, or the person or authority who or which directed the production of the document, had in mind other uses of the document will not preclude the document being accorded privilege, if it were produced with the requisite dominant purpose.”

The Court in Grant's case disagreed with Buckley L J in Birmingham & Midland Motor Omnibus Co. Ltd. v. London & North Western Railway Co. [1913] UKLawRpKQB 128; [1913] 3 KB 850, who had stated that the information obtained need not have been obtained for the sole purpose for use in litigation. The dominant purpose, according to the Court in Grant's case, of bringing the document into existence, was to obtain advice or assist in litigation reasonably contemplated. Anything less than this requirement would not qualify the document under legal professional **privilege**.'

47. The Court has not had the opportunity to look at the documents despite court orders for Mr. Singh to obtain the documents from his previous lawyers. However, the court must firstly consider what was the dominant purpose of the correspondences between the previous counsel and Mr. Singh and/or Plaintiffs as well as the tender with Mr. Toogood. Whether the dominant purpose was merely for providing advice on the purchase of the said subleases as well as preparation of conveyancing the said lands, then they fall outside of the ambit of legal privilege.
48. Mr Singh has deposed he is not in possession of the said files which were with the previous employees. He has also indicated to this court in sworn testimony that what-ever documents in his possession were listed in the AVL. He has also failed to provide to Court the documents for the Courts sighting.
49. Without perusing the documents, the Court is unable to conclude that the dominant purpose of the document was for the purposes of legal advice or for litigation.
50. The Plaintiffs counsel is willing to subpoena Mr. Ramesh Patel as previous Counsel.
51. Therefore, the court will Order that Orders (i), (ii) (iv) and (iiv) and that for orders (iii) that the R Patel be subpoenaed to attend Court on the date of Trial together with any correspondences pertaining to the tender for the sub-leases, negotiations for the purchase of the said sub-leases. These are notices issued in the normal course of subpoenaed.

ORDERS

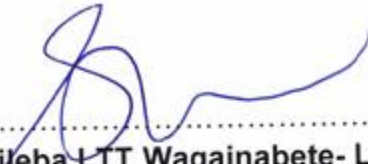
52. The Court orders as follows:

- (i) The Plaintiff within 14 days by Affidavit disclose and make available copies to the Second Defendant for the inspection of all correspondences and communications between the Plaintiff and/or Mr. Jay Singh and

Phillip Toogood of Bayleys Real Estate Fiji concerning the advertised mortgagee sale by HFC of the Vatulele leases and subleases including the Information Memorandum prepared in relation to the said mortgagee sale of Native Lease Nos. 28084 and 28085 and the 10 Subleases namely Native Sublease Nos. 611800, 611801, 611802, 611803, 611804, 611805, 611806, 611807, 611808, and 611812. This is for the period prior to the dates of the documents disclosed;

- (ii) The Plaintiff do within 14 days by Affidavit disclose and make available copies to the Second Defendant for the inspection of the Plaintiff and/or Mr. Jay Singh's tender to Home Finance Corporation and/or Bayleys Real Estate of Fiji in relation to the HFC Mortgagee sale for Native Lease Nos. 28084 and 28085 and the 10 Subleases namely Native Sub Lease Nos 611800, 622801, 611802, 611803, 611804, 611805, 611806, 611807, 611808 and 611812 and/or any subleases for land in Vatulele;
- (iii) The Plaintiff's do within 14 days by Affidavit disclose and make available copies to the Second Defendant for the inspection of Jay Singh and/or Plaintiff's bid to HFC for Native Sublease Nos 611799, 611809, 611810, 611811, 611812, 611813, 611814, 611815, 611816, 611817, 611818, 611819, 611820, 611821, 611822, 611823, 611824, 611825, 611826 and 611827;
- (iv) The Plaintiff do within 14 days by Affidavit disclose and make available copies to the Second Defendant for the inspection of all correspondences and drafts of the Sale and Purchase Agreement between the Plaintiff and/or Jay Singh for the sale of Native Lease Nos. 28084 and 28085 and the 10 Sublease Nos. 611800, 611801, 611802, 611803, 611804, 611805, 611806, 611807, 611808 and 611812;
- (v) Plaintiff to subpoena R Patel to attend trial to give evidence (whether for the Plaintiff or Defendants) and bring along all correspondences with the Plaintiff and/or Jay Singh concerning the purchase of Native Lease Nos. 28084 and 28085 and the 10 Sublease Nos. 611800, 611801, 611802, 611803, 611804, 611805, 611806, 611807, 611808 and 611812 both before and after the purchase;

(vi) Costs in the cause.



Ms Senileba LTT Waqainabete- Levaci

Puisne Judge

