

IN THE RESIDENT MAGISTRATE'S COURT

AT SUVA-CIVIL DIVISION

Civil Action No. MBC 185 of 2021

BETWEEN: ISIRELI T FA TRADING AS FA & COMPANY a registered business of Level 4 FNPf Place Victoria Parade, Suva.

PLAINTIFF /APPLICANT

AND: TAJ MOHAMMED KHAN SHERANI Businessman and Company Director of 28 Hercules Street, Suva.

DEFENDANT/ RESPONDENT

For the Plaintiff/Respondent : Mr. I. FA (FA & COMPANY)

For the Defendants/Applicants: Ms. I. Sauduadua (LAL PATEL BALE LAWYERS)

Date of Hearing : 6th November 2023

Date of Ruling : 10th January 2024

Ruling on the issue of Discovery

1. The Applicant has filed a motion seeking that the Respondent serves an Affidavit which discloses the Deed of Settlement in the matter *Taj Mohammed Khan Sherani v Jameela Sherani*; Civil Action No. HBC 332 of 2018
2. The parties are at odds on whether the same should be disclosed, with the Applicant arguing in favour of the same whilst the Respondent does not see the nexus with the current claim.
3. The positions are clear from the Affidavits filed and the written and oral submissions of the parties.
4. What is not disputed though by the parties, is the fact that the document sought exists.

The Law and Analysis

5. The Application is made pursuant to Order 25 Rule 5 of the **Magistrates Court Rules 1945**. The same is regurgitated herein as follows:

"

Discovery of Documents

5. The court may order any party to the suit to make discovery, upon oath, of the documents which are or have been in his possession or power relating to any matter in question in the suit."

6. Master Tuilevuka (as he was then) in **Westside Motorbike Rentals (Fiji) Limited v Toganivalu Civil Action No, 55 of 2008** laid out the principles for Discovery as follows;

"[7]. Discovery can be sought at any stage of a proceeding even after a judgement or order in an action has been made (see **Singh v Minjesk Investment Corporation Ltd & Anor- High Court Civil Action No. HBC 148 of 2006** where Master Udit cited *Korkis -v- Wer & Co. [1914] LT 794* as authority for this position).

[8]. The following principles emerge from **Singh v Minjesk Investment Corporation Ltd & Anor- High Court Civil Action No. HBC 148 of 2006**. The onus initially is on the applicant to establish the following by way of affidavit evidence:

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

[9]. Courts will not allow the discovery process to be used towards assisting a party upon a fishing expedition such as to fish for witnesses or a new case (see Martin and Miles Martin Pen Co. Ltd v Scrib Ltd [1950] 67 RPC 1-7 as cited in Singh v Minjesk), Calvet -v- Tomkies [1963] 3 All ER 610.

Nor will discovery be ordered in respect of documents which are not related to or may not affect the actual outcome of the action: Martin and Miles Martin Pen Co. Ltd.- v- Scrib Ltd. [1950] 67 RPC 1-7). Furthermore, discovery will also be prohibited if it is for a general purpose of enabling a party."

7. The above decisions sets out the following considerations, that is;
 - i. Firstly, it must appear to the Court from evidence or from the nature or circumstances of the case that the documents exist;
 - ii. Secondly, the Applicant's affidavit must offer substantial assistance in establishing whether the particular documents to which the application refers exist and relate to a matter directly relevant to an issue in the action;
 - iii. Thirdly, further disclosure would be determined as essential from relevant issues emerging from the pleadings in the proceedings; and
 - iv. Fourthly, if the application seeking discovery were a 'mere fishing expedition', that is, it is general in purpose and unrelated to a matter in question, it would not ordered.
8. Considering the above authority the Court now asks the following questions.
9. **Has the Applicant been able to clearly identify the particular document or documents or class of documents that they are seeking to discover?**
10. This is answered in the affirmative, as this is clear from the motion filed by the Applicant.

11. **Has the Applicant shown a prima facie case that the specific documents or class of documents do in fact exist or have existed?**

12. As stated above-herein, at paragraph 4 there is no dispute as to the existence of the document. Both parties are in agreement on this issue, that is, the 'deed of settlement' exists.

13. **Has the Applicant established that the remaining documents are relevant in the sense that they relate to the matter in question in the action?**

14. A gleaning of the Writ and Statement of Claim, shows that at paragraph 15 and 16 of the Claim there is a reference to a settlement in the High Court Civil Action No. HBC 332 of 2018, where the Applicant was representing the Respondent.

15. The final bill/invoice which is the subject of this claim was prepared thereafter.

16. This court has had the pleasure of perusing the deed of settlement as empowered out of the decision in **Westminister Airways Ltd v Kuwait Oil Co Ltd** (1950) 2 All ER 596 (CA) at 603 per Jenkins LJ.

17. Upon perusal of the 'deed of settlement' the court notes that there is a reference to High Court Civil Action No. HBC 332 of 2018, in the 'deed of settlement'.

18. Consequently the court is of the view that there may be some correlation and relevancy to the matter in question in this action.

19. As a result this court shall grant the Application wherein the Respondent or his counsel shall provide via an Affidavit the 'deed of settlement' within twenty-one (21) days to the Applicant or his counsel.

20. Seven (7) days to appeal.


JEREMAI N.L. SAVOCA
Resident Magistrate

