

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Case No.: HPP 67 of 2016

BETWEEN : **ASHIKA RAMA** of 4/6 Lancewood Street, Algester QLD 4115,
Brisbane, Australia, Beautician.

PLAINTIFF

AND : **MONEEL RAMA** of 85 Nottingham Road, Calamvale,
Queensland, Australia, IT Consultant.

DEFENDANT

Counsel : **Mr. P. Sharma for the Plaintiff**
Ms. N. Tikoisuva for the Defendant

Date of Hearing : **27th June, 2017**

Date of Judgment : **31st July, 2017**

JUDGMENT

INTRODUCTION

1. This is an application filed by the Plaintiff seeking certain information through Summons for Discovery and Interrogatories, from the Defendant relating to an estate where the Defendant is the executor. The summons was made in terms of Order 24 and 26 of the High Court Rules of 1988.

2. The Summons for Discoveries and Interrogatories filed on 26th May, 2017 sought following orders;

“An order that within 7 days, the Defendant and/or its Solicitors, Toganivalu & Valenitabua, provide the following documents and information in relation to the contents of the Defendant’s Supplementary Affidavit filed on 19th April, 2017, to the Plaintiff’s Counsel’s Office:

Paragraphs 3(a) and (b)

i. Which Banks did the Defendant and/or his Solicitors write to for information relating to any accounts held in the name of late Kanti

Lal Rama aka Kanti Lal aka Kanti Rama aka Kanti Bhagubhai Rama ["Mr. Rama"].

- ii. The Defendant and/or his Solicitors provide a copy of each letter, email or other correspondence written to the Banks.
- iii. The Defendant and/or his Solicitors provide a copy of each reply letter, email or other correspondence received from the Banks.
- iv. The Defendant and/or his Solicitors provide a copy of each letter, email or other correspondence to any other institutions such as Insurance Companies for information relating to any accounts; funds; and/or policies held by or for Mr. Rama.
- v. The Defendant and/or his Solicitors provide a copy of each reply letter, email or other correspondence received from the other institutions.

3. Paragraph 3(e)

- vi. The Defendant and/or his Solicitors provide a copy of the Toganivalu & Valenitabua Trust Account Ledger to evidence the funds received; and paid out on behalf of the late Mr. Rama's Estate.
- vii. The Defendant and/or his Solicitors provide all of the Defendant's Trust Account Authorities to Toganivalu & Valenitabua for payments made out of the late Mr. Rama's Estate.

4. Paragraph 4(a)

- viii. When was the application made to have the Caveat over Certificate of Title No. 14001 withdrawn?
- ix. Has the Caveat over Certificate of Title No. 14001 been withdrawn?
- x. The Defendant and/or his Solicitors provide a Statement of Account for all Rental received for the 2 Telau Street property.

5. Paragraph 4(b)

- xi. The Defendant and/or his Solicitors provide a Statement of Account for all rental received from the 27 High Street property.
- xii. The Defendant and/or his Solicitors advise what other assets the Estate of Mr. Rama is entitled to receive from the Estate of the late Mr. Bhagubhai.

6. Paragraph 4(c)

- xiii. The Defendant and/or his Solicitors provide all advertisements in relation to the sale of motor vehicle registration number ES 620.
- xiv. The Defendant and/or his Solicitors provide all offers received for purchase of motor vehicle registration number ES 620.

- xv. The Defendant and/or his Solicitors provide a Statement of Accounts for the funds received for the sale of motor vehicle registration number ES 620.

7. Paragraph 4(d)

- xvi. The Defendant and/or his Solicitors provide a Statement of Accounts for the FJD\$127,086.86.
- xvii. The Defendant and/or his Solicitors provide all correspondences relation to the transfer of the FJD\$127,086.86 to the Estate Account in Westpac Australia.
- xviii. The Defendant and/or his Solicitors provide all documentation to confirm the FJD\$127,086.86 has been transferred to the Estate Account in Westpac Australia.
- xix. The Defendant and/or his Solicitors provide details of the Estate Account in Westpac Australia; along with the most recent Bank Statement.

8. Letters of Administration

- xx. In the Letters of Administration, the value of Mr. Rama's Estate is \$800,000.00
- xxi. The Defendant and/or his Solicitors advise how the \$800,000.00 is made up.

9. Liabilities

- xxii. The Defendant and/or his Solicitors provide a Statement of the current liabilities of Mr. Rama's Estate."

- 3. Before the Summons for Discovery and Interrogatories filed solicitors for the Plaintiff on 3rd May, 2017 wrote a letter to the solicitors of the Defendant in following terms;

- 1. "I refer to the Defendant's Supplementary Affidavit filed on 19th April 2017 and served on my Office on Thursday 27th April 2017.
- 2. I also refer to our appearance before Justice Amaratunga in Suva High Court No. 9 on 19th April, 2017.
- 3. I now advise as follows.
- 4. Pursuant to Orders 24 and 26 of the High Court Rules 1988. I request that the following documents and information in relation to the

contents of the Defendant's said Affidavit, be furnished to my office before the close of business on Wednesday 10th May 2017.

Paragraphs 3(a) and (b)

5. Which Banks did the Defendant and/or his Solicitors write to for information relating to any accounts held in the name of late Kanti Lal Rama aka Kanti Lal aka Kanti Rama aka Kantilal Rama aka Kanti Bhagubhai Rama ["Mr. Rama"].
6. Please provide a copy of each letter, email or other correspondence written to the Banks.
7. Please provide a copy of each reply letter, email or other correspondence received from the Banks.
8. Please provide a copy of each letter, email or other correspondence to any other institutions such as Insurance Companies for information relating to any accounts; funds; and/or policies held by or for Mr. Rama.
9. Please provide a copy of each reply letter, email or other correspondence received from the other institutions.

Paragraph 3(e)

10. Please provide a copy of the Toganivalu & Valenitabua Trust Account Ledger to evidence the funds received; and paid out on behalf of the late Mr. Rama's Estate.
11. Please provide all of the Defendant's Trust Account Authorities to Toganivalu & Valenitabua for payments made out of the late Mr. Rama's Estate.

Paragraph 4(a)

12. When was the application made to have the Caveat over Certificate of Title No. 14001 withdrawn?
13. In the High Court on 19th April 2017, you mentioned that Vanita Rama would consent to withdraw the Caveat. My client has advised that Vanita Rama signed the Withdrawal of Caveat approximately a month ago. Has the Caveat been withdrawn?

14. Please provide a Statement of Account for all Rental received for the 2 Telau Street property.

Paragraph 4(b)

15. Please provide a Statement of Account for all rental received from the 27 High Street property.
16. Please advise what other assets the Estate of Mr. Rama is entitled to receive from the Estate of the late Mr. Bhagubhai?

Paragraph 4(c)

17. Please provide all advertisements in relation to the sale of motor vehicle registration number ES 620.
18. Please provide all offers received for purchase of motor vehicle registration number ES 620.
19. Please provide a Statement of Accounts for the funds received for the sale of motor vehicle registration number ES 620.

Paragraph 4(d)

20. Please provide a Statement of Accounts for the FJD\$127,086.86.
21. Please provide all correspondences relating to the transfer of the FJD\$127,086.86 to the Estate Account in Westpac Australia.
22. Please provide all documentation to confirm the FJD\$127,086.86 has been transferred to the Estate Account in Westpac Australia.
23. Please provide details of the Estate Account in Westpac Australia; along with the most recent Bank Statement.

Letters of Administration

24. In the Letters of Administration, the value of Mr. Rama's Estate is \$800,000.00. Please advise how the \$800,000.00 is made up.

Liabilities

25. Please provide a Statement of the current liabilities of Mr. Rama's Estate.

26. Please contact the write if you require any further information in this matter.”
4. For the said letter, solicitors for the Defendant wrote following reply on or around 22nd May, 2017 and replied in the following manner;

“We refer to your letter dated 3 May 2017 and emailed on the same day.

As per our instructions, our responses are as follows:

1. Para 5 – 9: Our client personally visited the various Banks with the Letters of Administration No. 57684 and was personally informed that no account existed for Kanti Lal Rama. However, our office followed up again with ANZ Bank, Westpac Bank, Bank of Baroda, HFC Bank and Bred Bank pursuant to the Summons issued on the matter and the written responses of the various Banks are attached as “A”.
2. Para 10 – 11: Please find attached as “B” an account of the monies held at our Trust Account and the disbursements for the same.
3. Para 12 – 13: The Caveat No. 317755 on property in 2 Telau Street, CT No. 14001 on Lot 60 on DP No. 3608 is yet to be removed. The applications for the same are pending as the affidavit in support of the Applications for the removal was received by our office on 26 April 2017. This will be filed as soon as the balance of the fees is paid by our client for its lodgment.
4. Para 14: The information requested has been withheld by Chanchal Rama, the co-owner of the property and the grandmother of both our clients.

There has been some difficulty faced by our client in getting Mrs. Rama to cooperate with our client. Our client has also made another request for the information you have sought.

5. Para 15: We are instructed that Chanchal Rama is under the impression that she still owns the property and has failed to give information regarding the rental.
6. Para 16: No other assets are known in Fiji besides the 2 properties, 1 car and 1 bank account as contained in the Supplementary Affidavit filed on 19 April 2017.

7. Para 17 – 19: No advertisement was made officially. \$8000 FJD was received for the car cash payment. A receipt can be provided once estate has been finalized.
8. Para 20 – 23: This can be provided at the very end once all assets in Fiji have been finalized. These funds will be withheld until all costs for the estate has been completed included queries made in Canada and ongoing expenses related to the estate.
9. Para 24: Our client had provided an estimate was made based on 1 property how much money was left in Fiji. Ashika Rama, your client, was present during this statement and had also attested to this value.
10. Para 25: Our client is yet to finalize the liabilities of the Estate Management which includes paying for travel for Estate Administrator to finalize the estate and fees for lawyers and ongoing rates for property in Australia which your client, has failed to put her funds into. Attached as “C” is a list of the liabilities.

Finally our client had contacted your client to have a discussion with her regarding the information you have sought in your letter, however she has failed to accept our client’s request for a discussion and is being difficult.

If you have any further queries, do not hesitate to contact the undersigned.”

5. Considering the reply of the solicitors for the Defendant, the Defendant had replied to the queries raised in the letter dated 3rd May, 2017. It is presumed that the Plaintiff was not satisfied with the answers, but had not specified any specific issue regarding a particular answer, or an information supplied.
6. Instead of raising any issues, in the said reply with the Defendant, the Plaintiff had filed this summons, but in my judgment this application is premature as Defendant had replied to the requests made on 3rd May, 2017 and the Plaintiff was unable to state on what aspects that reply cannot be accepted under the circumstances of the case.
7. This summons was filed while the Originating Summons filed by the Plaintiff was yet to be listed for hearing and the orders sought in the said Originating Summons were

overlapping with the said orders, sought as final relief in this action. It is trite law that discoveries and interrogatories cannot be utilized as fishing expedition.

8. In terms of Order 24 rule 3(1) or Order 24 rule 7 of the High Court Rules of 1988, the court can make orders for the production of the documents in the custody of a party, or to make an affidavit as to when the said document was parted from the possession of that party.
9. The Plaintiff had not indicated any document that the Defendant had possession, for the discovery. So, no order for discovery can be made, without the knowledge of specific document and its custody or possession with the Defendant.
10. In terms Order 26 of the High Court Rules of 1988, a party can seek leave of the court to apply for interrogatories. No such request was made by the Plaintiff in term of Order 26 rule 1 of the High Court Rules of 1988 prior to the summons filed on 26th May, 2017 after the receipt of the letter from the solicitors for the Defendant dated 22nd May, 2017.
11. In terms of Order 26 rule 1 (2) of High Court Rules of 1988 a copy of the proposed interrogatories must be served with the summons, and there is no evidence that this mandatory requirement was fulfilled by the Plaintiff. There is no affidavit of service filed in respect of the summons.
12. The court can give leave for interrogatories that it consider necessary for the disposing the matter fairly, and considering the reply letter of the solicitors for the Defendant, I am satisfied that necessary information requested were supplies and questions raises were replied. No order for Discovery or Interrogatories can be made in the circumstances of the case.
13. In the circumstances the summons for Discoveries and Interrogatories is dismissed with cost summarily assessed at \$1,500.

FINAL ORDERS

- a. The Summons for Discovery and Interrogatories is struck off.
- b. Cost is summarily assessed at \$1,500.

Dated at Suva this 31st day of July, 2017



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Justice Deepthi Amaratunga
High Court, Suva