

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 30 of 2014

BETWEEN: **DIGICEL (FIJI) LIMITED**, a limited liability company having its business address and its registered address at Ground Floor, Kadavu House, Suva, Fiji Islands.

PLAINTIFF

AND: **FIJI RUGBY UNION**, a sports association having its business address at Fiji Rugby Union House, 35 Gordon Street, Suva, Fiji Islands.

FIRST DEFENDANT

AND: **VODAFONE FIJI LIMITED**, a limited liability company having its registered office at 168 Princess Road, Tamavua, Suva, Fiji Islands.

SECOND DEFENDENT

BEFORE: Hon. Acting Chief Justice Kamal Kumar

COUNSEL: Mr J. Turner and Ms M. Muir for the Plaintiff/Applicant
Mr N. Lajendra for the First Defendant/Respondent
Mr S. P. Sharma for the Second Defendant/Respondent

DATE OF RULING: 28 May 2020

RULING

(Application for Discovery, Production, Inspection and Copying)

1.0 Introduction

1.1 On 8 July 2014, Plaintiff (hereinafter referred to as **“the Applicant”**) filed Application for discovery, production, inspection and copying of documents pursuant to Order 24 Rules 3 and 7 of High Court Rules 1988 (**“HCR”**).

(“the Application”)

1.2 The Application was called on 29 August 2014, when parties were directed to file Affidavit/Submissions and the Application was adjourned to 30 October 2014, for hearing.

1.3 The parties filed Submissions and made Oral Submissions on date of hearing.

1.4 Following Affidavits were filed on behalf of the parties:-

For Applicant:-

- (i) Affidavit of Brenda Nanius sworn and filed on 18 July 2014 (**“Nanius’s Affidavit”**).
- (ii) Affidavit of Brenda Nanius sworn and filed on 18 July 2014 (**“Nanius’s Supplementary Affidavit”**).

For First Respondent:-

Affidavit of Radrodro Tabualevu sworn and filed on 12 September 2014 (**“Tabualevu’s Affidavit”**).

For Second Respondent:-

Affidavit of Premila Devi sworn and filed on 12 September 2014 (**“Devi’s Affidavit”**).

2.0 Application for Discovery

2.1 Following pleadings and documents were filed by the parties prior to the Application being made by the Applicant:-

- (i) Statement of Claim by Applicant;
- (ii) Amended Statement of Claim by Applicant;
- (iii) Statement of Defence and Counterclaim by First Respondent;
- (iv) Statement by Defence and Counterclaim by Second Respondent;
- (v) Reply to Statement of Defence of the First Respondent and Defence to Counterclaim;
- (vi) Reply to Statement of Defence of Second Respondent and Defence to Counterclaim;
- (vii) First Respondent's Reply to Defence to Counterclaim;
- (viii) Second Respondent's Reply to Defence to Counterclaim;
- (ix) Affidavit Verifying Applicant's List of Documents ("Applicant's AVL D");
- (x) Affidavit Verifying First Respondent's List of Documents ("First Respondent's AVL D");
- (xi) Affidavit Verifying Second Respondent's List of Documents ("Second Respondent's AVL D");

2.2 Order 24 Rule 3 of HCR provide as follows:-

"3.-(1) Subject to the provisions of this rule and of rules 4 and 8, the Court may order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to make and serve on any other party a list of the **documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter**, and may at the same time or subsequently also

order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party.

- (2) Where a party who is required by rule 2 to make discovery of documents fails to comply with any provision of that rule, the Court, on the application of any party to whom the discovery was required to be made, may make an order against the first-mentioned party under paragraph (1) of this rule or, as the case may be, may order him to make and file an affidavit verifying the list of documents he is required to make under rule 2 and to serve a copy thereof on the applicant.
- (3) An order under this rule **may be limited to such documents or classes of document only, or to such only of the matters in question in the cause or matter**, as may be specified in the order.”
(emphasis added)

2.3 Order 24 Rule 7 of HCR provide as follows:-

- “7.-(1) Subject to rule 8, the Court may at anytime, 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 possession, custody or power, and if not then in his possession, custody or power, when he parted with it and what has become of it.
- (2) An order may be made against a party under this rule notwithstanding that he 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 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.”

2.4 It is noted that all parties filed AVLD as directed by Court under Summons for Direction filed by Plaintiff.

2.5 Pursuant to Order 24 Rule 3 of HCR:-

- (i) Court has discretion to order a party to the proceedings to file and serve AVLD on any other party;
- (ii) Documents subject to the list should be those that are or have been in possession , custody or power of the particular party;
- (iii) Subject documents should be those relating a matter in question in the cause or matter.

2.6 Pursuant to Order 24 Rule 7 of HCR:-

Court has discretion to Order at any time an application of a party to:-

- (i) Make Affidavit statement whether that other party has or had in its possession had a particular document or class of documents;
- (ii) If document is no longer in that party's possession then to state when it parted away with that document and what has become of that document;
- (iii) Order under this Rule may be made irrespective of whether other party filed AVLD or not;
- (iv) Applicant for discovery of the document must depose his/her belief that such document or class of documents is or had been in possession/custody of other party; and
- (v) Such document or class of documents relate to one or more matters in question in the cause or matter.

2.7 The principles for further and better discovery of documents has been stated in various cases, some of which has been cited by the parties.

2.8 In brief, the principle to be adopted in determining an application for further discovery are:-

- (i) There must be sufficient evidence that the documents subject to the application exist which the other party has not disclosed; **Berkeley Administration Inc. & Ors. v McClelland & Ors.** [1990] FSR 38 (CA) (19 February 1990);
- (ii) Document(s) relate to matters in issue in the proceedings: **Berkeley**;
- (iii) There is sufficient evidence that the document was or is in possession, custody or power of the other party: **Berkeley**
- (iv) If, party from who discovery is sought files an Affidavit denying that he has that document in his/her possession, no further Affidavit will be required unless Applicant can show otherwise from the Affidavit, or documents referred to in the Affidavit or admission made in pleadings **Compagnie Financiere du Pacifique v Peruvian Guano Co** (1882) 11 QBD55 (CA).
- (v) Court could look at the Affidavit filed or the documents referred to in the Affidavit or the pleadings between the parties : **Jones v. Monte Co.** 5 QBD 556 cited in **Compagnie** (p61) or nature of document that ought to be set out in the Affidavit;
- (vi) In respect to “**a document relating to any matter in question in the action**” document should be disclosed if it “**relates to the matter in question in the action, which not only would be evidence upon any issue, but also which, it is reasonable to suppose, contains information which may - not which must - either directly or indirectly enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary.**” **Compagnie (Supra)**
- (vii) Documents which attract public interest immunity: **Fiji Military Forces v. Fiji Police Force and Ors.** [2006] ABU 30 U of 2006 (28 July 2006) or Legal Professional Privilege; **Ventouris v. Mountain** [1991] 1 WLR 607.

In **Ventouris v. Mountain**, Court of Appeal stated as follows:-

“Our system of civil procedure is founded on the rule that the interests of justice are best served if parties to litigation are obliged to disclose and produce for the other party’s inspection all documents in their possession, custody or power relating to the issues in the action. This is not of course a necessary rule but it is firmly established here. It is not however an absolute rule, as exceptions such as legal professional privilege and public interest immunity demonstrate.”

(viii) Discovery will not be ordered if it is for general performance of enabling the Applicant to fish for witnesses or a new case; **Calvet v. Tomkies** [963] 3 ALLER 610 cited in **Singh v. Minjesk** (Supra).

2.9 In **Berkeley Administration Inc.** (Supra), Court of Appeal amended Judges Order by disallowing discovery by Defendant of pre-incorporation transactions such as bank statements and returned cheques of Defendant's provisional accounts on the ground that those document were not material to any issue in the action.

2.10 In **Compagnie Financiere du Pacifique** (Supra):-

- (i) Plaintiff in its Affidavit set out its Minute book, which referred to certain documents and letters, the entries of those documents and letters were subsequent to the date of alleged breach of the contract;
- (ii) These documents and letters were not part of Plaintiff's Affidavit;
- (iii) Defendant made application for discovery of 5 documents including documents in 2.10(i) above;
- (iv) Master referred the Defendant's application to a Judge, who made order to disclose documents No. 1 but refused disclosure of documents 2, 4 and 5;
- (v) In regards to documents 2, 4 and 5 Lord Justice Baggallay stated as follows:-

“I am of the opinion that it appears from the minutes that they are in the possession or power of the plaintiffs, and that it is not unreasonable to suppose that they may contain information, directly or indirectly, enabling the defendants to advance their own case or to damage the case of their adversaries.”

2.11 In **FMF** case (Supra):-

- (i) In High Court, Naresh Kumar as Plaintiff filed claim against FMF, FPF, Commissioner of Police, Timoci Silatolu, George Speight, Attorney-General of Fiji and Republic of Fiji for damages.
- (ii) Timoci Silatolu filed Application for discovery of:-
 - (a) The findings of the Board of Inquiry into the involvement of the 1st Meridian Squadron in the illegal take over of Parliament on 19 May 2000, and the

subsequent holding of hostages until the 13 July 2000, as directed by the Land Force Command and signed by Col A. Tuatoko, consisting of Lieutenant Col J N Evans, Major A Mohammed, Major T Gucake and WO1H McComber.

- (b) The records of evidence taken in that Board of Inquiry.
- (iii) High Court ordered that those documents be disclosed to Court by MFP producing those documents to Registrar, who was to arrange certified true copies of those documents which was to put in a sealed envelope and delivered to the Judge with original given back to FMF;
- (iv) FMF appealed Judge's decision
- (v) Court of Appeal in allowing the appeal stated as follows:-

“[17] In our view the report of the board of Inquiry is **neither relevant nor admissible in the present proceedings**. It amounts to no more than the opinion of the Board on the material heard before it. A Board of Inquiry has its own procedures and takes its own course. The view of the officers constituting the Board cannot amount to evidence and its only possible relevance to these proceedings is that it may refer to the evidence of specified witnesses. Such reference cannot be more than the selective opinion of the officers constituting the Board of Enquiry. Such evidence cannot be of assistance to the court in this case as it cannot be known how it was selected, nor on what basis. The nature and conduct of the enquiry which elicited such material is not known. Material of this kind can carry no weight and its admission might give rise to a suspicion that it has had an influence to which it is not entitled.”

- (vi) In respect of “record to proceedings” Court of Appeal got involved in the exercise of balancing “between the interest if applicant in obtaining access to material and the interest of the public in favour of immunity. Court of Appeal held that “record of proceedings” are entitled to immunity from disclosure or inspection. However Court ordered that names of witnesses be released to the Applicant on ground that Applicant from those names can of those whom he can involve as possible witnesses and that can include “in the event of the first defendant objecting to the disclosure of the names of any witness then such objection is to be referred for decision to a single judge of this Court.”

- (i) Plaintiff being owner of vessel "Italia Express" sued representative of its underwriters after underwriters refused its insurance claim for total loss of its vessel in a series of violent explosion when it was lying alongside Drapetsona New Mole at Piracus in Greece.
- (ii) Underwriters refused claim on the ground that loss was caused or connived by Plaintiff;
- (iii) Defendants pleading relied on information given by Plaintiff's cousin who was alleged to be part of plan to destroy the vessel but was later excluded from it;
- (iv) Plaintiff sought further and better discovery of various classes of documents one of which was **"All documents received by or on behalf of underwriter from G. D. V ("cousin")**.
- (v) Defence claimed "legal Professional Privilege (**"LPP"**) over those documents;
- (vi) Court of Appeal in respect to LPP stated as follows:-

"... it is necessary that actual and potential litigants, be they claimants or respondents, should be free to unburden themselves without reserve to their legal advisers, and their legal advisers be free to give honest and candid advice on a sound factual basis, without fear that these communications may be relied on by an opposing party if the dispute comes before the court for decision. It is the protection of confidential communications between client and legal adviser which lies at the heart of legal professional privilege, as is clear from the classical exposition of the law by Sir George Jessel M.R. in *Anderson v. Bank of British Columbia* (1876) 2 Ch.D. 644, 648-649. Without the consent of the client, and in the absence of iniquity or dispute between client and solicitor, no inquiry may be made into or disclosure made of any instructions which the client gave the solicitor or any advice the solicitor gave the client, whether in writing or orally."
- (vii) Court of Appeal further stated that:-

"... So are documents prepared for the dominant purpose of submission to a legal adviser in connection with actual or anticipated litigation: ***Waugh v British Railways Board*** [1980] A.C. 521."
- (viii) Court of Appeal ordered discovery of the document sought on the ground that documents sought were prepared before Defendant sought legal advice and were not prepared for the "dominant purpose" of obtaining legal advice.

2.13 In **Singh v. Minjesk Investment Corporation Ltd.** (Supra):-

- (i) Plaintiff as Administrator of the Estate of Sumirta Devi Ben aka. Sunita Singh sued the Defendants for alleged negligence of the First Defendant who was employed by Second Defendant and claimed for loss to the Estate of his deceased wife and compensation under Compensation to Relatives Act 1920.
- (ii) Second Defendant made application seeking further and better discovery of Plaintiffs and his sons tax return at the time of Deceased's death being 16 January 2005.
- (iii) Court ordered Plaintiffs to file Supplementary AVLD as to the tax return of Plaintiff and his son Navneel Singh for three (3) years preceding the death of the deceased on the ground that tax return is relevant to assessing quantum of damages claimed for them as dependents of the Deceased.

2.14 It is noted that First Respondent in Tabualevu's Affidavit and its Submissions had indicated that certain documents should be in Applicant's possession because they have been annexed to Affidavits filed in relation to Interlocutory Injunction Application.

2.15 It must be made clear that during trial only pleadings are taken into consideration and not Affidavits filed in interlocutory matters unless those Affidavits are converted to pleadings.

2.16 Therefore, if the documents that were annexed to Affidavits filed in respect to Application for Interlocutory Injunction, those documents if relevant and not if subject to any public interest immunity or LPP should be discovered when in parties AVLD if they relate to a question in the cause or matter.

2.17 Tabualevu's Affidavit and First Defendant in its Submissions also assert that Applicant should have possession of the correspondence exchanged between the Applicant and First Respondent and as such should not be discovered by First Respondent.

2.18 Mere fact correspondence is exchanged between the parties to the proceedings is not a ground to not to discover that correspondence in each parties AVLD.

2.19 Pursuant to Order 24 Rule 1, 2, 3 of High Court Rules **parties are to discover the documents in their possession, custody or power if those documents are relevant to any matter in question in the cause or matter.**

2.20 At paragraph 3 of First Respondent's AVLD it states as follows:-

"3. That the statements made in paragraph 1, 3 & 4 of the List of Documents now produced and shown to me marked "A" is true."

Even though List of Documents is not marked "A", I take it that List of Documents attached to AVLD is the one referred to in AVLD.

2.21 At paragraph 5 of First Respondent's List of Documents it is stated as follows:-

"5. **Neither the First Defendant nor its solicitors** or any other person on its behalf **has now or ever had in their possession, custody or power any document** of any description whatsoever **relating to any matter in question in these proceedings other than the documents enumerated in Schedule 1 Part 1 and Part 2** hereto."

This paragraph does not say and rightly so, that Schedule 1 Part 1 does not include correspondence between First Respondent and Applicant which should be in AVLD of Applicant.

2.22 The Court will now look at documents listed in Applicant's Application.

2.23 **3A (a) - Email sent by the First Respondent to the Applicant as referred to in paragraph 24 of the First Respondent's Statement of Defence and Counterclaim.**

First Respondent at paragraph 7(i) of Tabualevu's Affidavit states that email in Applicant's possession being recipient of the e-mail and it is annexed to Affidavit of Maurice McCarthy filed on 31 July 2014. In view of what is stated at paragraphs 2.14 to 2.21 of this Ruling, First Respondent should have discovered this email.

2.24 **3A (b) Document from the First Respondent to the Applicant disclosing the Vodafone Offer in writing, as referred to in paragraph 33 of the Defence.**

First Respondent at paragraph 7(ii) of Tabualevu's Affidavit says that Applicant being recipient of the letter has possession and letter is annexed to Affidavit of Berlin Kafoa dated 11 February 2014 in view of what is stated at paragraphs 2.14 to 2.21 of this Ruling. I direct that First Respondent discover this letter.

2.25 **3A(c) Bid submitted by the Second Respondent to the First Respondent, as referred to in paragraph 34 of the Defence.**

First Respondent at paragraph (iii) of Tabualevu's Affidavit says this document has been disclosed and annexed to Berlin Kafoa's Affidavit filed on 11 February 2014. In view of what is stated at paragraph 2.14 to 2.21 of this Ruling I direct that First Respondent discover this document.

2.26 **3A(d) to 3(g) - Advertisements run by the Applicant through the four media organisations (a) Fiji Times Limited, (b) Fiji Sun, (c) Fiji Broadcasting Corporation and (d) Fiji Television Limited, as referred to in paragraph 93 of the Defence; Advertisements run by the Plaintiff through the two advertising agencies (a) Go Advertising Limited and (b) Media Metro, as referred to in paragraph 94 of the Defence; Advertisements placed by the Applicant in the Fiji Sun and Fiji Times newspapers, as referred to in paragraph 95 of the Defence; Advertisements placed by the Applicant and aired on the televisions channels Fiji Television Limited and Fiji Broadcasting Limited as referred to in paragraph 96 of the Defence.**

First Respondent at paragraph 7(iv) of Tabualevu's Affidavit say that it is impossible to define exact date of advertisement due to its ongoing nature and to disclose it prior to trial. I direct that First Respondent discover details of all advertisement which are in its possession, custody or power only.

2.27 **3A(h) - Letters and demands made by the First Respondent to the Applicant, as referred to in the second sentence of paragraph 99 of the Defence.**

First Respondent at paragraph 7(vi) of Tabualevu's Affidavit say that Applicant being recipient of this letter has it in its possession and letter is annexed to Affidavit in Support for the Injunction Application. In view of what is stated at paragraph 2.14 to 2.21 of this Ruling I direct that First Respondent discover letter and demand by the Applicant.

2.28 **Paragraph 3(A)(i) - Demand letters sent by the First Respondent to the Applicant's media organisations and advertising agencies, as referred to in paragraph 101 of the Defence.**

First Respondent at paragraph 7(viii) of Tabualevu's Affidavit say that letter has provided to Applicant on 11 July 2014, and annexed to the Affidavit in Support of Injunction Application. In view of what is stated at paragraph 2.14 to 2.21 of this Ruling I direct that First Respondent discover Demand letter sent to Applicant and to media organisations.

2.29 **3(A)(j) - Advertisements published or displayed by the Applicant's media organisations and advertising agencies, as referred to in paragraph 101 of the Defence.**

First Respondent at paragraph 7(viii) of Tabualevu's Affidavit gave same reason as for paragraphs 3A(d) to (g) of the Application. I direct First Respondent to disclose the advertisements referred to at paragraph 101 of its Statement of Defence and Counter-claim which are in First Respondent's possession, custody or power.

2.30 **3(B)(a) The "advice" given by the First Respondent to the Second Respondent, as referred to in the Affidavit of Aslam Khan for the Second Defendant sworn on 18 February 2014.**

First Respondent at paragraph 8(i) of Tabualevu's Affidavit say that the said letter has been disclosed and annexed to Affidavit in Opposition filed by Second Respondent on 19 February 2014.

Since this letter has already been disclosed to Plaintiff, I direct that the letter be discovered by First Respondent.

2.31 **3(B)(b) - Two other sponsorships entered into between FRU and other parties referred to in a letter from the First Respondent dated 24 January 2014, but which are not included in the First Respondent's List of Documents.**

First Respondent at paragraph 9(i) of Tabualevu's Affidavit say that two (2) Sponsorship Agreements referred to in letter dated 24 February 2014 (should read 24 January 014) is not relevant.

First Respondent in its Submission repeats what is said in Tabualevu's Affidavit. Applicant has not proved as to how the two (2) Agreements are relevant to the question in the cause or matter in this action.

Hence, First Respondents is not obliged to disclose the two (2) Sponsorship Agreements mentioned in the letter.

- 2.32 **3(C)(a) - All letters, emails, drafts of agreements and or meeting notes between the First Respondent and the Applicant in respect of renewal of the Digicel Sponsorship Agreements and negotiations therefore prior to the advertisement for expressions of interest in or about 2012 and 2013, as referred to in paragraphs 25 to 48 of the Amended Statement of Claim.**

First Respondent's position is that the Affidavit in proving to two correspondences and documents. In view of what is stated at paragraph 2.14 to 2.21 of this Ruling I direct First Respondent to discover e-mail and letters exchanged between Applicant and First Respondent, Minutes of Meeting between Plaintiff and First Respondent between 16 October 2013 to 31 January 2014 EXCEPT for Documents Nos. 8 to 21 of which form part of First Respondent's AVLD; Draft Agreements and Minute of First Respondent's Board Meetings.

- 2.33 **3(C) (c) and (d) All letters, emails, notes of telephone calls, memoranda or other records of communications between the First Respondent and the Second Respondent relating to the rugby sponsorship from 1 January 2013 to 2 February 2014 (when the First and Second D Respondent's purported to sign a sponsorship agreement), excluding Document No. 7 of the First Respondent's List of Documents filed on 27 June 2014. All letters, emails, notes of telephone calls, memoranda or other records of communications between the First Respondent and any other person (including but not limited to the shareholders of the Second Respondent and consortium members of the Second Respondent) relating to the rugby sponsorship from 1 January 2013 to 2 February 2014 (when the First and Second Respondents purported to sign a sponsorship agreement), excluding Document No.7 of the First Respondent's List of Documents filed on 27 June 2014.**

This Court accepts what is stated at paragraph 10(ii) (iii) of Tabualevu's Affidavit and First Respondents Submission that there is no need to discover these documents. Applicant has failed to satisfy the Court that documents sought are relevant to any matter in question in this case or matter as between Applicant and First Respondent. This Court also accepts First Respondent's Submission that Applicant's attempt to seek these document tantamounts to fishing expedition.

- 2.34 **3(C)(e) and (f) - All press releases, letters, emails, notes of telephone calls, internal memoranda or other records relating to press conferences called and or cancelled and or proposed to be called by the First Respondent relating to the rugby sponsorship in or about December 2013 and January 2014, including any notification to the Second Respondent and its consortium members such as Fiji Airways; and All letters, emails, notes of telephones calls, internal memoranda or other records of communications to third parties who had submitted expressions of interest for the rugby sponsorship in or about January 2014.**

This Court accepts First Respondent's submission that documents referred to in these paragraphs are not relevant to the proceedings between Applicant and First Respondent.

Second Respondent

- 2.35 **6A(a) - Advertisements placed in the Fiji Sun newspaper and other media organisations on diverse dates after 13 February 2014, as referred to in paragraph 20(i) of the Defence.**

Second Respondent submits that advertisements are annexed to Affidavit of Premila Devi sworn on 12 September 2014.

In view of what is stated at paragraph 2.14 to 2.21 of this Ruling I direct that Second Respondent discover the advertisements referred to in paragraph 20(1) of its Statement of Defence and Counterclaim which are in its possession, control and custody.

- 2.36 **6(B)(a) - The "advice" received by the Second Respondent from the First Respondent as referred to in the affidavit of Aslam Khan for the Second Respondent sworn on 18 February 2014.**

This Court accepts Second Respondent's Submission that this document has been discovered in its AVLD filed on 27 June 2014 as item No. 4 – Schedule - Paragraph.

- 2.37 **6(C)(a) to (h) Correspondence and emails between the Second Respondent and the First Respondent relating to the FRU rugby/7s/Digicel Cup sponsorship(s), whether occurring before or after the FRU tender advertisement, excluding Document nos. 2 and 4 of the Second Respondent's List of Documents filed on 27 June 2014; Memoranda, notes or other record of telephone calls between the First and Second Respondents relating to the rugby sponsorship; Notes, emails, letters or other**

records relating to the press conference called by the First Respondent for 17 January 2014 and cancelled, including any notification to consortium members such as Fiji Airways; Copy or record of the Second Respondent's response, whether by way of telephone, email or letter, to the First Respondent's letter of 24 January 2014; Correspondence, emails or notes of telephone calls between the First and Second Respondents between 29 January 2014 and 2 February 2014 relating to the rugby sponsorship and or the Respondent; Correspondence and emails to and from consortium members or proposed consortium members relating to the rugby sponsorship and or the Second Respondent's expression of interest; Correspondence and emails to and from Mr Vittorio Colao, Russell Stanners and or Vodafone Group plc and the Second Respondent relating to Mr O'Brien's correspondence of 31 January 2014, and or the rugby sponsorship; and Correspondence and emails to and from the Second Respondent and its then parent company Vodafone Group plc relating to the rugby sponsorship and or expression of interest.

This Court accepts Second Respondent's Submission that Applicant has failed to establish that any such correspondence or press conference were or are in possession, custody and control of the Second Respondent and that the documents Applicant seek Second Respondent to discover are not relevant to any matter in question in the cause or matter in this proceedings.

3.0 Order

3.1 In view of what is stated :-

- (i) First Respondent do file Supplementary Affidavit Verifying List of Documents and discover documents including correspondence prayed for at paragraphs 3A(a) to 3A(j), 3B(a) and 3C(a) of the Application subject to what is stated at paragraph 2.32 of this Ruling, which are in its possession, custody and control by 25 June 2020;
- (ii) First Respondent **is not obliged to provide copies of documents** forming part of its List of Documents or Supplementary List of Documents to be filed pursuant to this Ruling, to the Applicant, that have already been provided to the Applicant by the First Respondent or annexed to any Affidavit filed for and on behalf of Applicant from date of commencement of this action to date.

- (iii) Upon service of the Supplementary Affidavit Verifying List of Documents on the Applicant by First Respondent under paragraph 3.1(i) of this Ruling, Applicant inspect the documents and write to First Respondent requesting copies of documents forming part of First Respondent's AVLD and Supplementary AVLD which request is not to include any documents that have already been disclosed to by the First Respondent to the Applicant or those that are annexed to any Affidavit filed for on behalf of Applicant from date of commencement of this action todate.
- (iv) Second Respondent do file and serve Supplementary Affidavit Verifying List of Documents discovering copies of advertisement as prayed for in paragraph 6A(a) of the Application which are in possession, custody and control of the Second Respondent by 25 June 2020.
- (v) Second Respondent do provide copies of the advertisement subject to its Supplementary Affidavit Verifying List of Documents to be filed pursuant to this Order to the Applicant, by 3 July 2020.
- (vi) Costs of this Application for Further Discovery, Production, Inspection and Copying be costs in the cause.




K. Kumar
Acting Chief Justice

At Suva

28 May 2020

SIWATIBAU AND SLOAN for Applicant/Plaintiff

LAJENDRA LAW for the First Respondent/Defendant

PATEL SHARMA LAWYERS for the Second Respondent/Defendant