

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO.: HBC 98 of 2021

BETWEEN : **SANGEETA DEVI PRASAD T/A ALPINE FOREST
INVESTMENT**
PLAINTIFF

AND : **BASIC INDUSTRIES PTE LIMITED**
DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Ms. S. Ali (Chand & Young Lawyers)

DEFENDANT : Ms. S. Devan with Mr K. Chand (Neel Shivam Lawyers)

RULING BY : Acting Master Ms Vandhana Lal

DELIVERED ON : 27 April 2022

INTERLOCUTORY RULING

Application

1. The Defendant seeks following orders via it's application of 05th May 2021:

- (i) *That the Plaintiff do provide to the Defendant within 7 days of the hearing of this summons further and better particulars of the Statement of Claim filed in these proceedings as requested in the Schedule of this Summons.*
- (ii) *Further, that in the event the Plaintiff fails to serve further and better particulars as may be ordered by paragraph 1 of this summon that the claim of the plaintiff be and stand as being dismissed.*

2. This application is made pursuant to Order 18 Rule 11(3) of the High Court Rules and is supported by an affidavit of Mosese Volavola the Chief Executive Officer of the Defendant company.

Preliminary Objections by the Plaintiff

3. The Plaintiff objects to the use of the affidavit in support sworn by Mosese Volavola and affidavit in reply by Ritesh Dass on the following grounds:
 - *The deponent has failed to provide any authority from the company to give evidence;*
 - *The affidavit in reply by Ritesh Dass does not state Mr Volavola had authority to depose the affidavit;*
 - *The affidavit by Ritesh Dass is titled "Plaintiff's Affidavit in Reply" and not the Defendant's;*
 - *The authority by Ritesh Dass is not on letter head and does not contain names of authorized officers who have signed the same. The first authorized officer is the deponent himself.*
 - *The affidavit of Ritesh Dass served on the Plaintiff is not an executed copy.*
4. I have on the hearing date made orders regarding the title of the affidavits and hence will only make determination regarding authority to execute the affidavits.
5. Section 53 of the Companies Act authorizes following persons to execute a document for a company:
 - (a) *2 directors of the company;*
 - (b) *A director and a secretary of the company; or*
 - (c) *For a private company that has a sole director who is the sole secretary of the company, the director.*

6. Section 123 authorizes the director of the company (unless otherwise provided for in the company's article of association) to delegate any of their powers to:
 - (a) *A committee of directors;*
 - (b) *A director;*
 - (c) *An employee of the company; or*
 - (d) *Any other person.*
7. Hence, it is prudent pursuant to Section 53 of the Companies Act that the directors of the Defendant company signs the affidavit on its behalf and pursuant to Section 123 if the duty is delegated to another officer a duly executed authority is submitted.
8. The affidavit deposed by Ritesh Dass has an authority annexed to it. The same has been executed by two authorized officers.
9. It is not clear if these authorized officers are both Directors of the company or one is a Director and the other a Secretary.
10. Again, the authority is not in compliance with Sections 53 and 123 of the Companies Act.
11. Hence, I find the two deponents of the respective affidavit have not submitted a duly executed authority to depose the respective affidavit on behalf of the Defendant and as such both the affidavits ought to be struck out.

Order 18 Rule 11(3) of the High Court Rules

12. Order 18 Rule 11(3) authorises the Court to “*order a party to serve on any other party particulars of claim, defence or other matter stated in his or her pleadings, or in any affidavit of his or her ordered to stand as a pleading, or a statement of the nature of the case on which he or she relies, and the order may be made on such terms as the court thinks just*”.

13. The Supreme Court Practise (1993 Edition) Volume 1 at paragraph 18/12/2 outlines the function of particulars and these are:
- “(1) To inform the other side of the nature of the case they have to meet as distinguished from the mode in which that case is to be proved;*
 - (2) To prevent the other side from being taken by surprise at the trial;*
 - (3) To enable the other side to know what evidence they ought to be prepared with and to prepare for trial;*
 - (4) To limit the generality of the pleadings;*
 - (5) To limit and define the issues to be tried and as to which discovery is required;*
 - (6) To tie the hands of the party so that he cannot without leave go into any matters not included.”*
14. The purpose of the rule is that *“parties should in their pleadings state all the “necessary particulars” of any claim, defence or other matter pleaded and if not stated, the court has powers to order a party to serve either (1) particulars or further and better particulars of any claim, defence or other matter pleaded, or (2) a statement of the nature of the case relied on, or (3) both such particulars and statement”* – The Supreme Court Practice (supra).
15. The Supreme Court Practice (supra) further at paragraph 18/12/39 on page 320 states that *“such application should normally be preceded by a written request for the required particulars”*.
16. It further goes on to state that *“the question whether and what particulars should be ordered is one of discretion. Applications may be refused where there has been there has been an inexcusable delay in making the application or the application is made at a late stage”*.

Form of Particulars

17. The Supreme Court Practice (supra) at paragraph 18/12/40 on page 321 outlines how particulars are to be served and is summarized as follows.

That if not contained in pleadings, particulars served separately enter on request or by order, they become part of the pleadings.

Hence it should be served as a formal document as a pleading with the title of the action and description of the document and not in the form of a letter.

If they exceed three folios in the case of debt, expenses or damages (but not otherwise) they must be set out in a separate document referred to in the pleading.

The request or order must be incorporated with the particulars, so that each item of the particulars must follow immediately after the corresponding item of the request or order.

The request or order for further and better particulars, and the particulars supplied in response thereto, must therefore not remain in two separate documents but must be married together and embodied in a single document, which will set out (1) the number and letter of the paragraph and subparagraph where applicable, of the pleadings in question (2) what particulars have been requested or ordered under each such paragraph and subparagraph, and (3) the further and better particulars supplied in response to such request or order.

Particulars Requested by the Defendant

18. The schedule to the summon by the Plaintiff is reproduced as follows:

Paragraph 6

- (i) Copy(s) of the "contract" referred to in paragraph 6 of the claim if in writing.
- (ii) Copy(s) of any prior quotations given to defendant for the supply of timber and timber products.
- (iii) Copies of any relevant correspondence between the Plaintiff and the Defendant and your client that establishes the contract of sale as alleged.
- (iv) If oral, full particulars of any oral contract of sale, with particular reference to:
 - (a) Date(s) on which the oral contract for sale was entered.
 - (b) Who on behalf of the Plaintiff and Defendant entered into the contract of sale?
 - (c) What was the terms and conditions of the contract of sale?

Paragraph 7

- (i) Identities of person(s) from the Defendant company who made calls or sent messages to place order referred to in paragraph 7(a).
- (ii) Details of phone numbers used to make calls or send messages.
- (iii) Full details on the dates of calls and /or messages.
- (iv) Full details on the job sites that the materials were delivered to.
- (v) Details of person(s) that received the calls or messages on behalf of the Plaintiff.
- (vi) Copies of Purchase Orders issued by our client, Basic Industries referred to in paragraph 7(d)
- (vii) Copies of invoices referred to in paragraph 7(e)
- (viii) Details of payment made on invoices referred to in paragraph 7(f).

Paragraph 8

Provide the full particulars of the contract of sale referred to in paragraph 8.

Paragraph 9

Plaintiff claims that the Goods were either picked up or delivered to the Defendant. Provide:

- (i) Details of how and when order(s) were placed for sale and supply of timber to the defendant.*
- (ii) Copies of any or all Delivery Dockets confirming delivery of the timber.*

Paragraph 10

Please provide copies of all the invoices and purchase orders referred to in paragraph 10 of the claim.

Paragraph 11

The plaintiff claims that a sum of \$8,238.88 was paid for the first invoice.

Please provide:

- (i) Copy of the paid invoice*
- (ii) Details of payment with copies of relevant documents*
- (iii) Copy of receipt of payment issued by the plaintiff*

Paragraph 15

Please provide:

- (i) Copy(s) of any service contract executed by both parties if in writing.*
- (ii) Copies of any relevant correspondence between the Plaintiff and the Defendant that establishes contract of service as alleged.*

Paragraph 16

Copies of all invoices and purchase orders for the services rendered from 5th June 2020 to 10th September 2020 referred to in paragraph 16.

Paragraph 26

- (i) *Provide the usual detail of Fiscal invoice raised on the Fiji Revenue and Customs Service VAT Monitoring System portal.*
- (ii) *Provide copy of the Plaintiff's VAT registration.*
- (iii) *Provide detail of Value Added Tax paid for the Goods and Service.*

Determination

19. What the Defendant is seeking are not particulars of the claim but discovery which is not required at this stage but at a later stage of the proceeding under Order 24 of the rules.
20. As far as the alleged contract is concerned the pleadings should state the following – “*date of the alleged agreement; names of all parties to it; whether made orally or in writing; if oral by whom it was made; if written, identify the document; and the relevant terms relied upon; if contract is implied from a series of letters or conversation or otherwise from a number of circumstances set out generally, and further particular, requiring details will not be generally ordered*” – The Supreme Court Practice (Supra) at paragraph 18/12/5 on page 328.
21. I find that paragraphs 6 – 10 of the statement of claim is in compliance of the above and as well as Order 18 Rule 11 of the Rules, hence I do not see the need to make orders as per the application by the Defendant.
22. Paragraph 10 of the claim gives out in detail the following information for goods sold to the Defendant between 05 May 2020 till 10 September 2020 – invoice date; invoice number; purchase order number/delivery docket number; amount of invoice with balance due; particulars of goods delivered/supplied (items/price and quantity) and whom the goods were received by.
23. Further on paragraph 16 of the claim outlines details of services rendered to the Defendant between March 2020 and September 2020 and these are: invoice date; invoice number; purchase order number/ delivery docket number; amount on invoice and balance due with particulars and whom the services were received by.

Orders

24. The Defendant's application of 05th May 2021 is dismissed with costs against the Defendant.
25. The Defendant is ordered to pay cost summarily assessed at \$850 and is to be paid within 14 days from to-date.
26. The Defendant is granted leave to file and serve its defence by 4pm 11 May 2022.
27. Matter to take normal course under the Rules thereafter.




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Vandhana Lal [Ms]
Acting Master
At Suva.

27 April 2022

TO:

1. Suva High Court Civil Action No. HBC 98 of 2021;
2. Chand & Young Lawyers, Solicitors for the Plaintiff;
3. Neel Shivam Lawyers, Solicitors for the Defendant.