

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

Civil Action No. **HBC 265 of 2023**

BETWEEN: KOKOMO RESORTS PTE LIMITED a limited liability company having its registered office at c/- KPMG, L10 BSP Suva Central, Renwick Road, Suva, Rewa.

FIRST PLAINTIFF

KOKOMO SERVICES PTE LIMITED a limited liability company having its registered office at c/- KPMG, L10 BSP Suva Central, Renwick Road, Suva, Rewa.

SECOND PLAINTIFF

AND: SUN INSURANCE COMPANY LIMITED also known as **SUN INSURANCE COMPANY PTE LIMITED** (Registration No. 10633) is a public company limited by shares having its registered office at Ground & Level1, Kaunikula House, Cnr of Laucala Bay Road and Honson Street, Suva, Fiji.

DEFENDANT

Representation:

Plaintiff: Mr R. Singh & Mr T. Low (Munro Leys).

Defendant: Ms Saumaki (On Instruction of AK Lawyers).

Date of hearing: 10th September 2024.

Ruling

A. Introduction

[1] The Plaintiff has filed summons for leave to appeal the interlocutory ruling and for stay of the Master's ruling of 19th August 2024. The Learned Master has in her ruling made the following orders:

"9. On the summons for direction dated 04 July 2024 following orders are made:

- i. The Plaintiff does within twenty-one (28) days serve on the Defendant a list of documents and file an affidavit verifying such list limited to the documents relating to the matters in question in this action.*

- ii. *The Defendant does within twenty-one (28) days thereafter serve on the Plaintiff a list of documents and file an affidavit verifying such list limited to the documents relating to the matters in question in this action.*
- iii. *There be an inspection of documents within twenty-one (21) days thereafter.*
- iv. *Pre-trial conference to be convened and a minute to be filed within 21 days thereafter."*

B. Background

[2] The Plaintiffs are each insured under a Material Damage and Business Interruption Insurance Policy issued by the Defendant. The Plaintiffs have made formal claims for indemnity under the policy for certain losses. Those claims for indemnity are the subject of the proceedings. The Defendant disputes that the Plaintiffs are entitled to indemnity in the manner and quantum, contended by the Plaintiffs.

[3] On 4th July 2024, the Plaintiffs filed Summons for Directions seeking orders in line with what was agreed in correspondences between the parties. The Summons for Directions sought the following orders:

- “1. *THAT the Defendant do within 30 days notify the Plaintiffs of their amounts claimed in the claim submissions that are agreed by responding to paragraph 6 of the Plaintiffs’ letter dated 21 March 2024 (Defendant’s Response);*
2. *THAT upon receipt of the Defendants’ response, the Plaintiffs thereafter do within 90 days (excluding public holidays and dates declared as High Court legal vacation) file and serve their lay and expert evidence by way of affidavits (Plaintiffs’ Affidavit Evidence);*
3. *THAT upon receipt of the Plaintiffs’ Affidavit Evidence, the Defendant thereafter do within 90 days (excluding public holidays and dates declared as the High Court legal vacation) file and serve its lay and expert evidence by way of affidavits (Defendants’ Affidavit Evidence);*
4. *THAT upon receipt of the Defendant’s Affidavit Evidence, the Plaintiffs and the Defendant thereafter do within 30 days confer regarding the nature and extent of discovery;*
5. *THAT the parties be at liberty to apply to relist the action on 7 days’ notice for further directions on discovery, inspection, pre-trial conference, and filing of summons pursuant to Order 34 of the High Court Rules 1988;*
6. *THAT the costs of the application be costs in the cause.”*

[4] On 9th August 2024, the Plaintiffs’ lawyers informed the Learned Master of the reasons for the orders sought in the summons. The Defendants were consenting to the summons for directions. The Master on 19th August 2024 delivered the ruling which is the subject of this application.

C. Application for Leave to Appeal Interlocutory Ruling

[5] In **Habib Bank Ltd v Raza [2020] FJHC 369; HBC53.2005 (26 May 2020)**, His Lordship Kamal Kumar the acting Chief Justice (as he then was) stated as follows and I quote the relevant portion:

“3.1 The case authorities in respect to Appeals against interlocutory orders have been stated in **Gosai v. Nadi Town Council [2008] FJCA 1.ABU116.2005 (22 February 2008)** as follows:-

“28. *APPEAL ON INTERLOCUTORY DECISION*

*In coming to the decision that the appeal should be refused; the Court has also had reference to the High Court's decision in **Heffernan v. Byrne and Ors HCF Civil Action No. HBM 105 of 2007 (19 February 2008)**. There, in refusing leave to appeal against an interlocutory decision, His Lordship set out a comprehensive collocation of the authorities, referring to **Kelton Investments Limited an[d] Tappoo Limited v. Civil Aviation Authority of Fiji and Motibhai & Company Limited [1995] FJCA 15, ABU 0034d.95s; Edmund March & Ors v. Puran Sundarjee & Ors Civil Appeal ABU 0025 of 2000; and KR Latchan Brothers Limited v. Transport Control Board and Tui Davuilevu Buses Limited Civil Appeal No. 12 of 1994 (Full Court)**.*

29. *As His Lordship observed, in **Edmund March & Ors** this Court said:- As stated by Sir Moti Tikaram, President Fiji Court of Appeal in **Totis Incorporated, Sport (Fiji) Limited & Richard Evanson v. John Leonard Clark & John Lockwood Sellers (Civ. App. No. 33 of 1996 p. 15)**:*

It has long been settled law and practice that interlocutory orders and decisions will seldom be amenable to appeal. Courts have repeatedly emphasized that appeals against interlocutory orders and decisions will only rarely succeed. The Fiji Court of Appeal has consistently observed the above principle by granting leave only in the most exceptional circumstances.

30. *Further, as His Lordship also noted, in **KR Latchan Brothers Limited** a Full Court of Appeal (Tikaram, Quillam and Savage JJ) said:*

*“ ... The control of proceedings is always a matter for the trial Judge. We adopt what was said by the House of Lords in **Ashmore v. Corp. of Lloyd's [1992] 2 All ER 486**- Furthermore, the decision or ruling of the trial judge on an interlocutory matter or any other decision made by him in the course of the trial should be upheld by an appellate court unless his decision was plainly wrong since he was in a far better position to determine the most appropriate method of conducting the proceedings.”*

D. Analysis

[6] It is important to note that both the sides and the lawyers are in agreement with the application by the Plaintiffs. Mr Singh's submission is that there are thousands of documents. Given the nature of the issues in the proceedings, the volume of

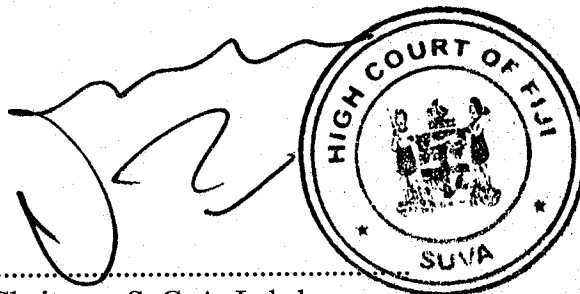
documents required to be reviewed and produced in order to comply with general order discovery is expected to be substantial and take a significant amount of time and cost to complete. The exercise suggested by the parties would assist the court and the parties. According to Mr Singh, the Learned Master could not see the bigger picture.

[7] The Plaintiffs have attached draft grounds of appeal in the affidavit in support of Joey Leong. I have perused them and also gone over the ruling of the Learned Master. I fully understand the position and the stance of the Learned Master. However, given the complexity of the issues and the volumes of documents, the approach advanced by the parties is clearly reasonable. In this era where we are conscious of case management and time limitations and the need to deal with case with least cost to the parties, the approach of the parties cannot be ignored. If we are able to narrow down on the relevant documents, the Court will clearly focus on the issues and the relevant documents. Rather than be burdened with loads of documents. I find that there are exceptional circumstances for leave to be granted.

[8] For the reasons given herein I grant the Plaintiff leave to appeal the orders granted by the Learned Master on 19th August 2024. The time of filing and serving the notice of appeal be extended by 7 days from the date of grant of leave. All proceedings herein between the Plaintiffs and the Defendant, other than the proceedings related to this application and the appeal, be stayed pending the determination of the appeal. The costs of the summons be cost in cause.

E. Court Orders

- a. Leave granted to Plaintiff to appeal the orders of the Learned Master of 19th August 2024.
- b. The time of filing and serving the notice of appeal be extended by 7 days from the date of grant of leave.
- c. All proceedings herein between the Plaintiffs and the Defendant, other than the proceedings related to this application and the appeal, be stayed pending the determination of the appeal.
- d. The costs of the summons be cost in cause.



Chaitanya S. C. A. Lakshman
Puisne Judge

30th September 2024