

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. **HBC 184** of 2017

BETWEEN: **SOUTH SEA SLIPWAY LIMITED** a duly incorporated company of Suva,
Fiji.

PLAINTIFF/ RESPONDENT

AND: **FIJI PORTS CORPORATION LIMITED** a duly incorporated Government
Commercial Company constituted under the Public Enterprise Act 1996
having its registered office situate at Lot 1, Tofua Street, WaluBay, Suva

FIRST DEFENDANT/APPLICANT

AND: **ASSETS FIJI LIMITED** a duly incorporated Government Commercial
Company constituted under the Public Enterprise Act 1996 having its
registered office at Ministry of Public enterprises, Level 4, Civic Tower,
Victoria Parade, Suva, Fiji.

SECOND DEFENDANT

BEFORE **:** **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Ms. Verma P. for the Plaintiff/Respondent**

Mr. Kumar A. for the 1st Defendant/Applicant

Mr. Ram V. for the 2nd Defendant

DATE OF JUDGMENT: 18th March, 2026

JUDGMENT

*[Leave to Appeal Interlocutory Ruling and Stay of Proceedings delivered on 08th February
2023]*

Introduction

1. The First Defendant/Applicant filed a Summons coupled with an Affidavit in Support on 22nd February 2024 and sought for the following orders:
 - (1) Leave be granted to the First Defendant/Applicant to appeal the Interlocutory Ruling of the Master delivered and dated the 8th February 2023; and
 - (2) Proceedings herein before the Master be stayed until determination of this application.
 - (3) Any other orders that the Court deem just.
2. The application is made pursuant to Order 59 Rules 11 and 16 of the High Court Rule 1988 and the inherent Appellate Jurisdiction of the Court.
3. The impugned ruling concerns an **application for 'specific discovery'** brought by the Plaintiff.
4. The Appellant submitted that the Learned Master granted excessively broad, general or otherwise blanket orders for discovery against the First Defendant, including documents spanning several years and of a nature that infringes upon privileged, confidential material which does not necessarily have relevance to the current proceedings.
5. The Appellant contends that the ruling is inconsistent with the principles of necessity, proportionality and specificity and as preserved in **Order 24 Rule 8 of the High Court Rules 1988**.
6. In the Plaintiff/Respondent's Affidavit in Answer deposed by Radhika Kumar filed on 16th April 2024, she states that the proposed Notice of Appeal and Grounds of Appeal in Vajira Piyasena's Affidavit in reply of 30th April 2024, lacks merits and does not have any prospect of success.
7. In the Affidavit in Reply by Vajira Piyasena, she deposes that:
 - (i) There are no substantive or material objections deposed as to the application for Leave to Appeal the decision of the Learned Master and for stay pending the determination of the leave to the pending Appeal.
8. Further, the Appellant/ First Defendant believes that Radhika Kumar's deposition at paragraph 6 of the Affidavit is generally unfounded as she has failed to give any valid or

explicit reasons or any explanation at all as to why the proposed Grounds of Appeal allegedly lack merit and would not succeed.

9. The proceedings before the Master has been stayed by Consent by an Order of Hon. Mr. Justice Latchman.
10. The First Defendant/Applicant seeks an Order for 'Leave to Appeal', the Learned Master's Ruling of 8th February 2023, pursuant to Order 59, Rule 11 and 16 of the High Court Rules 1988.
11. There are a total of Nine (9) proposed Grounds of Appeal.
12. Order 59 Rule 8 [O.59, r8] deals with "**Appeal from Master's decision** whilst Order 59, Rule 11 [O.59,r.11] deals with '**Application for Leave to Appeal.**'

Determination

13. Order 24, Rule 7 [O.24, r.7] of the High Court Rules 1988 sets out an Order for discovery of particular documents.
14. In **Berkeley Administration -v- McClelland** [1990] FSR 381, the Court restated the principles of discovery under Order 24 rule 7 as follows:-
 - (1) There is no jurisdiction to make an order under Order 24 rule 7 for the production of documents unless:-
 - (i) There is sufficient evidence that the document exists which the other party has not disclosed;
 - (ii) The documents relate to matters in issue;
 - (iii) There is sufficient evidence that the documents are in possession custody and power of the other party.
 - (2) When it is established that the above three prerequisites for jurisdiction exists then the Court can make an order.
 - (3) The order must identify with precision the documents or categories of documents to be disclosed so as to prevent the making of false affidavit from a respondent who deposes an affidavit in good faith based on the identity of the documents given for discover

The denial of the existence of a document when it exists can be detrimental to a party's case in that he cannot rely on those documents if they are produced by his opponent (upon leave being granted) at the trial. There are times in which copies exist but originals are sought to be discovered and their existence are denied.

15. In Hulsbury's Laws of England, 4th edition at page 78, the authors aptly described the documents which are capable of being discovered as follows:

8. Documents required to be disclosed.

The obligation of a party to make discovery necessarily involves that he must make a full and frank disclosure of all relevant documents which are or have been in his possession, custody or power. Apart from any order limiting the Scope of the discovery of particular documents or class of documents, or to particular issues, there are two general and essential conditions as to what documents are required to be disclosed-

- (i) They must be relevant, that is, they must relate some matter in question in the action or other proceedings; and
- (ii) They must be or have been in possession, custody or power of the party required to make discovery. (See to Atkin's Volume 15, 2nd edition, pages 78-80).

16. However, Courts have a wide jurisdiction to order discovery and inspection.

17. Reference is made to case of **Ram Kumar Singh v. Minjesk Investment Corporation Ltd**, Civil Action No. 148/2006, (05-05-2008) Master J. Udit canvassed the applicable principles and case law authorities in some detail. From his analysis what emerges clearly is that **the onus initially is on the applicant to establish the following by way of affidavit evidence.**

- (v) Identify clearly the particular document or class of documents that is sought to be discovered, [O.24, r.7],
- (vi) show a prima facie case that the specific document or class of document do in fact exist or have existed [O.24,R7(i)]
- (vii) establish that these documents are relevant in the sense that they relate to the matter in question in the action.

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).

18. It should be noted that whether or not any particular document is admissible or inadmissible is immaterial to its discoverability.

19. Therefore, the threshold criteria in relation to 'specific discovery' is that Firstly, it must be shown to relate to (some) matter in question in the case, Secondly, the documents must be shown to exist andare or have been in the possession, custody of power... of the party against whom discovery is being sought.

20. The general principle governing discovery of documents was stated by Brett L.J. **Compagnie Financiere du Pacifique v Peruvian Guano Co.**, (1883), UK Law RpKQB 95, (1882) 11 QBD 55 at pg 63. His Lordship Mr. Justice Byrne in **Parvati Manilal Lallu Ranchod - v - Sundar Lal Lallu** Suva High Court Civil Action No. HBC 488 of 1991 at page 3 of the Judgment after referring to the above case summarized the principle as follows-

*"This text was applied by Menzies J. in **Mulley v. Manifold** (1959) HCA 23, (1959) 103 CLR 341 at 345 where his Lordship stated that "Discovery is a procedure*

directed towards a proper examination and determination of the issues between the parties as disclosed in the pleadings and not towards assisting a party upon a fishing expedition."

21. Further, discovery will not be ordered in respect of documents which are not related to or may not affect the actual outcome of the Action: **Martin and Mile's 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 to fish for witnesses or a new case; **Calvet v. Tomkies** [1963] 3 ALL ER 610.

22. Honorable Justice Calanchini in **Denarau Corporation Ltd v. Slatter & Guthreine Co Ltd.** [2013] FJCA 94 held [at Para. 13]:

'Leave will be more readily granted when legal rights as distinct from matters of practice and procedure are involved and some injustice may be caused.'

23. The Court considering a request for permission is not required to analyse **whether the grounds of proposed Appeal will Succeed**, but merely whether there is a real prospect of Success (**Hunt v. Peasegood** (2000) *The Times*, 20 October 2000).

24. Lord, Woolf, MR Said, in **Swain v. Hillman** [2001] 1 ALL ER 91 that a 'real' prospect of success means that the prospect of success must be realistic rather than fanciful.

Are the documents necessary to be disclosed?

25. The Learned Master in her Ruling of 8th February 2024, directed the First Defendant/Appellant to make an affidavit stating if the First Defendant/ Appellant has or had at any time in their possession, custody or power, and if not, then in their possession, custody or power, when they parted with the documents, enumerated at paragraph 16(a) to (e) of her Ruling and what has become of them?

26. The Appellant/ First Defendant asserted that the Master development planned and/or a copy of the same are privileged, sensitive, confidential and restricted documents. Therefore, the Appellant/First Defendant is not obliged to provide or disclose the same at this stage of the proceedings. The Appellant/ First Defendant, will require necessary approvals and authorisation from relevant Government Ministries and Cabinet to release and then disclose the documents to the Court due to the sensitivity of the information.

27. Further, the question arises whether the documents ordered or directed by the Learned Master were relevant to the key issues as pleaded in the Plaintiff's Statement of Claims?-

- Whether the refusal to grant options for renewal was based on a genuine public purpose; or
- Whether refusal was intended to stifle competition with the First Defendant's subsidiary, Fiji Ships and Heavy Industries Ltd?

28. The First Defendant in its Statement of Defence at paragraph 11 (iii) stated that-

“The land was intended to be resumed or taken for a public purpose in terms of its future development plans.”
29. Whether any of the documents ordered or directed by the Learned Master [as enumerated in her Ruling at paragraph 16(a) to (e) inclusive [all board minutes, all board and/or company papers, master plan, all correspondences with Asia Development Bank, and all correspondences between the First Defendant and Aitkens Spencer Shipping Limited] for discovery shows, and relate to the First Defendant's strategies, policies or communications about reducing or competition as well as the master plan for redevelopment, which the First Defendant cited as the reason for not renewing the lease are relevant or central to the case. Prima facie, it is too early in the proceedings to determine that such documents fall within the Scope of Discovery.
30. The documents sought for discovery must be specifically identified, their existence must be established, and their relevance must be demonstrated by reference to the pleadings.
31. No doubt there will be a number of tribal issues to be tried by the Court at the trial and the Learned Master had quoted Kumar J in his Ruling of 1st February 2018 identified that one of the question to be tried at the trial would be if the First Defendant had refused to grant option for renewal for public purpose if and/or to stifle the competition against if and/or its subsidiary, Fiji Ship and heavy Industry Limited.
32. I find that the Learned Master failed to exercise caution in ordering specific discovery by failing to consider integral factors such as relevance, proportionality and the scope of the requested discovery before reaching her Decision on 8th February 2024.
33. The Orders for specific Discovery as per paragraph 16 (a) to (e) inclusive of the Learned Masters Ruling were made approximately 5 years after its inception without taking into account or consideration that subsequent events may have transpired which would have adverse potential impacts on the rights of the Appellant.
34. I reiterate that there will be a number of tribal issues to be determined at the trial. If the necessity arises for the disclosure of any documents, then it will be prudent on the party to subpoena the particular witness(s) to give *viva voce* evidence with tendering of respective relevant documents as exhibits for Court's determination, if the particular document(s) are in existence, power of custody accordingly.
35. Bearing above into consideration, I proceed to grant leave to the Applicant [First Defendant] to appeal the Interlocutory Ruling of the Learned Master delivered and dated 8th February 2024.

36. The proceedings earlier on stayed will continue to be stayed until the determination of the Appeal and the substantive action.
37. I make further order for the stay of \$2,000 costs against the Appellant.

Costs


38. The application for Leave to Appeal proceeded to full hearing by written and oral submissions.
39. The Plaintiff/Respondent to pay the First Defendant/Appellant a sum of \$1,000 summarily assessed costs within 14 days timeframe.

Orders

- (i) Leave to Appeal the Interlocutory Ruling of the Learned Master delivered and dated 8th February 2024 succeeds and is accordingly granted.
- (ii) Stay of proceedings as earlier granted will continue to stay until the final determination of the Appeal and the Substantive action.
- (iii) There will be a summarily assessed costs of \$1,000 against the Plaintiff/ Respondent to be paid within 14 days timeframe.

Dated at Suva this 18th day of March , 2026.




VISHWA DATT SHARMA
PUISNE JUDGE

CC: Mitchell Keil Lawyers, Suva
Patel Sharma Lawyers, Suva
Attorney General's Chambers, Suva