

**CARPENTERS FIJI LTD v SATENDRA PRASAD and SAKUNTLA DEVI
(HBC0026 of 2005L)**

5 HIGH COURT — CIVIL JURISDICTION

FERNANDO J

15 March 2012

10 **Evidence — admissibility — Unstamped and improperly stamped documents —
Indemnity, Guarantee and Bailment Act s 59 — Stamp Duties Act ss 39, 41, 100(1).**

**Taxes and duties — Stamp duties — Unstamped and improperly stamped documents
— Admissibility.**

15 In written submissions filed after trial, the defendants raised a defence that two guarantees on which the plaintiff relied were not stamped and accordingly were not admissible under s 41 of the Stamp Duties Act (Cap 205) (the Act).

Section 41 of the Act provided that no instrument was able to be pleaded or given in evidence or admitted to be good, useful or available in law or equity unless it was duly stamped in accordance with the law in force at the time when it was first executed.

20 The plaintiff admitted that each guarantee attracted stamp duty of \$1. The original guarantees were not in evidence and no other documents were in evidence.

Held –

(1) It is the duty of the plaintiff to verify that documents on which it relies are duly stamped, and, if not, to have them stamped and denoted as provided by the Act.

(2) On the face of the guarantees, the guarantees were not stamped in accordance with the law in force at the time when the guarantees were first executed as required by s 41 of the Stamp Duty Act, and were therefore prohibited from being pleaded or given in evidence or admitted to be good, useful or available in law or equity.

30 (3) The Court, in the exercise of its discretion, may admit and receive into evidence a document which is not or is insufficiently stamped when produced, provided it is brought to the attention of the Court.

(4) The Court has power to receive documents after the conclusion of the trial upon the payment of stamp duty and any penalty and the documents being denoted by the Commissioner of Stamps.

35 *Igor v Narodetsky* [2004] FJHC 321; *Nijie v Amadou Cora (The Gambia)* [1997] UKPC 41; *Ratu No 2 v Native Land Development Corporation* [1987] FJSC 9; [1991] 37 FLR 146, applied.

(5) The plaintiffs' action failed because there was no evidence of an agreement to guarantee in writing.

Plaintiff's action dismissed.

Case referred to

Prabha Wati v Nardeo Mishra HBC 37, considered.

45 *Bhavna Narayan* for the plaintiff.

Suresh Maharaj for the defendant.

[1] **Fernando J.** The Plaintiff instituted this action against the 1st and 2nd Defendants as “guarantors of credit transactions made between the Plaintiff and one **Satendra Prasad Constructions Limited**” as set out in paragraph 2 of the statement of claim. The 1st and 2nd Defendants are alleged to have entered in to

a Guarantee Agreement on the 22nd of January 2001, to indemnify the Plaintiff of any outstanding balances owed by **Satendra Prasad Constructions Limited** to the Plaintiff. The Plaintiff alleges an outstanding balance of \$146,144/81 due from **Satendra Prasad Constructions Limited**, and the said **Satendra Prasad**

5 **Constructions Limited** having now been wound-up (by order of 30th November 2004) the Plaintiff jointly and severally sues the 1st and 2nd Defendants for the said sum of \$146,144/81 together with interest at 1.75% per month “until settlement of account”.

10 [2] At the Pre Trial Conference parties agreed *inter alia* that **Satendra Prasad Constructions Limited** had been wound up, and raised the following issues;

1. Whether **Satendra Prasad Constructions Limited** owed the Plaintiff the sum of \$146,144/81?

15 2. Whether the Defendants purported to guarantee payment to the Plaintiff for the Plaintiff supplying goods on credit to **Satendra Prasad Constructions Limited**?

3. Whether a purported Guarantee Agreement had been signed by the Defendant to indemnify the Plaintiffs for any outstanding balance owed by SPCL (**Satendra Prasad Constructions Limited**)?

20 4. Whether the Defendants understood the Guarantees alleged to have signed by them and the effects of it?

5. Whether the guarantees were void ab initio?

6. Whether the terms and conditions of the guarantee were vague?

7. Whether the Guarantees were subject to s 50 to 57 of the Consumer Credit Act 1999?

25 [3] The Defendants by Summons filed on the 1st of October 2010, sought that this “**Court decide by way of preliminary issue whether the alleged guarantee is void and unenforceable by the Plaintiff against the Defendant**”, and the Court made interlocutory order *inter alia* that; “The Summons of the Defendant filed on the 21st of September 2010 is denied without prejudice to the

30 Defendants right to have the said issue answered after it is particularized with reference to the law relied upon and at the end of the trial.”

[4] At the trial the Defendants did not particularize with reference to the Law relied upon, the issue that they sought to raise as a preliminary issue, and the matter went to trial essentially on the issues raised at the Pre Trial Conference as

35 above.

[5] At the trial the Plaintiff led the evidence of Deepika Prakash (PW1), Hans A. Sam (PW2), Ronald Rischal Anand (PW3), Shirraz Rolan Narayan (PW4) and closed its case marking in evidence P1 to P4(P4-1 to P4-10) an ABD1-74. (86 documents). The Defendants closed their defence without leading the evidence of

40 any witness and without marking any documents.

[6] The Defendants when filing their written submissions after the trial for the first time raised the defence that the Guarantee Agreements marked as ABD1 and ABD2 are not stamped and as such not admissible under s 41 of the Stamp Duties

45 Act (Cap 205) which reads as follows;

Instruments not duly stamped inadmissible

41. *Except as aforesaid no instrument executed in Fiji or relating (wheresoever executed) to any property situate or to any matter or thing done or to be done in any part of Fiji shall except in criminal proceedings be pleaded or given in evidence or admitted*

50 *to be good, useful or available in law or equity unless it is duly stamped in accordance with the law in force at the time when it was first executed.*

[7] **The Plaintiff in its Written Submissions in reply ('Closing Submissions')** admitted that each document attracted a stamp duty of \$1/-, and submitted that it is not purely a question of law, and involved a question of fact as well, and should have been taken up at the trial and not at a late stage
5 **now to ambush the case of the Plaintiff.** However it is the duty of the Plaintiff to verify whether its documents are duly stamped and if not have them stamped and denoted as provided by the Stamp Duties Act. At the stage of pleadings the Defendant does not have the opportunity to verify whether the Plaintiff's documents are duly stamped or not, and as such cannot be expected to raise such
10 a defence. In fact in practice the objection is taken at the time the document is produced in evidence unless it is a document that parties have examined (the original document) at a pre trial stage.

[8] On the face of the two photocopies ABD1 and ABD2 they do not appear to
15 bear any photocopied impression of any indication of adhesive stamps, however that does not by itself mean that the original does not have adhesive stamps and is not duly stamped.

[9] However it is not only s 41 of the Stamp Duties Act, that applies, as the very section refers to the qualification "Except as aforesaid.." at the very beginning of
20 the said section. The previous s 39 deals with the "*Terms on which unstamped or insufficiently stamped instruments may be received in evidence*" and reads as follows;

Terms on which unstamped or insufficiently stamped instruments may be received in evidence

25 39.-(1) *On the production of an instrument chargeable with stamp duty as evidence in any court of civil judicature the officer whose duty it is to read the instrument shall call the attention of the judge or magistrate to any omission or insufficiency of the stamp thereon and, if the instrument is one which may legally be stamped after execution, it may, on payment to such officer of the amount of the unpaid duty and the fine payable
30 by law, be received in evidence saving all just exceptions on other grounds.*

Officer of court to transmit instrument for stamping

(2) *Such officer shall detain and immediately transmit to the Commissioner the instrument together with the duty and fine so paid thereon and the payment thereof shall be denoted on such instrument accordingly.*

35 [10] It is clear that the Act places a burden on the officers of the Court by stating at s 39(1);....."the officer whose duty it is to read the instrument *shall* call the attention of the judge or magistrate to any omission or insufficiency of the stamp thereon...". The relevant officers of the Court present at the time of the trial
40 would be the Counsel representing the parties primarily and the Court Clerk, as the Counsels too are officers of the Court. In this case it was the Plaintiff's Counsel who would be reading the document first in Court in marking the document according to *current practice*. However in the olden days in some Courts in other jurisdictions documents tendered were first submitted to the Court Clerk and read
45 by the Court Clerk in Court. In this case none of the officers of the Court brought to the attention of Court that the documents ABD1 and ABD2 were not stamped when the documents were marked at the trial. In fact no objection was raised to marking the photocopies of those two documents as attached to the Agreed Bundle of Documents by the Defendants Counsel. It was only on filing written submissions that the Defendants Counsel brought to attention that the documents
50 ABD1 and ABD2 are not stamped and raised the defence under the Stamp Duties Act.

[11] As both documents were part of the Agreed Bundle of Documents, both Counsels and especially the Plaintiff's Counsel had the opportunity to read as well as examine the documents (photocopies as well as originals) prior to producing and marking them in evidence. ABD1 and ABD2 are the Guarantee
5 Agreements upon which the Plaintiff sought to sue the Defendants, and as such the 2 most essential and primary documents in this case. However it is only after the trial and in filing written submissions on the 11th May 2011 that the Defendants Counsel appear to have detected the non-stamping, and raised the defence. However the Plaintiff does not appear to have taken the effort to pay the
10 default stamp duty and penalty and have the original documents denoted as provided by the Stamp Duties Act so far till after 8 months. In the premises, before judgment, this Court brought to the attention of the Deputy Registrar of the High Court in Lautoka and the Chief Registrar, s 39(1) and 39(2) of the Stamp Duties Act among other sections, and instructed a notice to be issued to both
15 parties to appear in Court and to produce the originals of ABD1 and ABD2.

[12] After the aforesaid notice both parties appeared by their Counsel; Mr Maharaj for the Defendants and Mr Iqbal Khan for the Plaintiff, on the 7th March 2011. Though the notice was for the production of the originals of ABD1 and
20 ABD2, the ORIGINALS OF THE SAID DOCUMENTS WERE NOT PRODUCED in Court and instead the Plaintiff moved for seven Days time to do so. On being asked by Court whether the originals of the said documents were available Mr Khan for the Plaintiff said he is unable to say and subsequently corrected himself that the originals of the said documents are *said* to be available.
25 Mr Maharaj for the Defendant objected to any documents being produced now, stating that he closed the defence taking in to consideration the documents that were **led and the manner in which they were led** at the trial. ***Mr Iqbal Khan for the Plaintiff agreed with the submission of Mr Maharaj for the Defendants. Considering the fact that both Mr Khan and Mr Maharaj are senior Counsel in Fiji, and Mr Khan and Mr Maharaj both agreeing that any documents cannot be produced (not even the originals) by the Plaintiff now, and the Court should proceed to judgment independently of the process of recovery of stamp duty and penalty,*** this Court referred the implementation of s 39(1) and 39(2) (especially to detain the documents and transmit same to the Commissioner with the stamp duty and penalty) to the Deputy Registrar, if the Deputy Registrar is of
30 the view that it is not belated to do so. This Court recognized that the duty placed by s 39(1) and 39(2) is not on the Court but on the particular officer of the Court who reads the document, and its implementation as such was referred to the administrative implementer being the Deputy Registrar. The Court thereafter
35 adjourned the matter for judgment on notice.

[13] However there is provision at Part IV of the Stamp Duties Act, in respect of instances when the Minister by Gazette directs duties, fees, or penalties to be paid by stamps only, as per s 100(2);.. "*if any such document is through mistake or inadvertence received, filed or used without being properly stamped, the court
45 in which the same is so received, filed or used may, if it thinks fit, order that the same be stamped, and thereupon such document shall be as valid as if it had been properly stamped in the first instance.*" The said provisions and s 100(1) which declares a document not so stamped as invalid ***applies to only documents to which Part IV of the Stamp Duties Act applies*** as prescribed in s 100(1). The
50 relevant sections of Part IV of the Stamp Duties Act read as follows;

PART IV- STAMP FEES

Minister may appoint fees, etc., to be collected by means of stamps only

99.-(1) The Minister may from time to time by notice in the Gazette direct that after the time specified in such notice all or any of the duties, fees, fines or penalties for the time being payable in money in any public department or office connected with the public service or to the officers thereof shall be collected by means of adhesive stamps.

(2) After the time so specified the duties, fees, fines and penalties therein mentioned shall be received by stamps denoting the sums payable and not in money.

Document invalid until properly stamped

100.-(1) Any document which ought to bear a stamp under the provisions of this Part shall not be of any validity unless and until it is properly stamped nor shall any judge, magistrate or officer of any court allow such document to be used, although no exception be raised thereto, until such document has been first duly stamped.

Court may order document to be stamped

(2) But if any such document is through mistake or inadvertence received, filed or used without being properly stamped, the court in which the same is so received, filed or used may, if it thinks fit, order that the same be stamped, and thereupon such document shall be as valid as if it had been properly stamped in the first instance.

[14] If the documents ABD1 and ABD2 are documents that come within Part IV of the Stamp Duties Act, **which they do not appear to be**, still on the basis that those documents are received through mistake or inadvertence the Court may if it thinks fit order that they be stamped. Therefore the Deputy Registrar may consider the reference of the recovery of stamp duty in respect of ABD1 and ABD2 by Court made on 7th March 2012 as an order for the said documents to be stamped, if the original documents are produced and such documents come within Part IV of the Stamp Duties Act. **However this Court is of the view that Documents ABD1 and ABD2 are not documents that come within Part IV of the Stamp Duties Act, and Part IV is in respect of recovery of stamp fees; "...payable in money in any public department or office connected with the public service or to the officers thereof" as stipulated by s 99, whereas ABD1 and ABD2 are Agreements entered between parties privately and the stamp fee is not "...payable in money in any public service or to the officers thereto.."**

[15] Therefore could the court take cognizance of ABD1 and ABD2?

[16] As such this Court shall **first** have to determine whether the documents ABD1 and ABD2 are prohibited from being "*pleaded or given in evidence or admitted to be good, useful or available in law or equity unless it is duly stamped in accordance with the law in force at the time when it was first executed*" as enacted by s 41 of the Stamp Duties Act. The said provision appears to be mandatory by the use of the words highlighted as follows in s 41; "*Except as aforesaid no instrument executed in Fiji or relating (wheresoever executed) to any property situate or to any matter or thing done or to be done in any part of Fiji shall except in criminal proceedings be pleaded....*" *The discretion appears to be available to Court under s 39(1) only to receive or even not receive the document after complying with the terms therein at the time of production or thereafter* (with the exception of documents coming within Part IV of the Stamp Duties Act and dealt under s 100(1) and 100(2)).

[17] As noted above the 2 photocopies of Documents ABD1 and ABD2 do not indicate adhesive stamps being used and in any event the *Plaintiffs Counsel too indirectly admits in their written submissions that they are not so stamped, in submitting that those documents ought to bear a stamp of 1\$ each.* (Falling within the 1st category set out in the Schedule to the Stamp Act). *On the face of ABD1 and ABD2 they appear to be not duly stamped in accordance with the law*

in force at the time *when it was first executed* as per s 41 of the Stamp duty Act thereby attracting the prohibition therein. If such documents are not duly stamped at the time of execution and subsequently submitted to be denoted to the Commissioner of Stamps then such a document should bear a penalty depending
5 on the delay as prescribed by the Stamp Duties Act. **The originals of the said documents or the duly noted documents of ABD1 and ABD2 have not been made available to Court though noticed to do so and 7 days have lapsed since 7th March 2012 (till 13th March 2012), when the Plaintiffs Counsel Mr Iqbal Khan moved for 7 days to tender the originals and nevertheless**
10 **thereafter conceded to the submissions of the Defendants Counsels that no such documents can now be submitted and considered by Court. Therefore the Court is compelled to conclude that ABD1 and ABD2 are not duly stamped in accordance with the law in force at the time when it was first executed, as required by s 41 of the Stamp Duty Act. Therefore it follows that ABD1 and**
15 **ABD2 are prohibited from being “pleaded or given in evidence or admitted to be good, useful or available in law or equity”(ie. cognizance)by s 41 of the Stamp Duties Act.**

[18] It is appreciated by this Court that s 41 of the Stamp Duties Act does not
20 declare the documents null and void or unenforceable *ab initio*, but it is in failing to comply with s 39 that it is rendered subject to the prohibition in s 41. **It is a technical defence, and though undesirable and unjust as it may seem, it is nevertheless prescribed by statute, and the advantage gained is made available in an adversarial trial system as followed in Fiji and most countries, though the obvious purpose of the legislature is to facilitate the recovery of stamp duty and not to impede the rules of admissibility of evidence. Had the said documents been duly denoted with stamp duty, penalty and produced, on the opportunity provided by the order of Court, and if the parties had not agreed not to admit those documents as they did by Counsel, then this Court would certainly have been inclined to receive them.** However the Plaintiff opting not to do so (as
30 submitted by Mr Iqbal Khan Plaintiffs Counsel in agreeing with the submission of the Defendants Counsel Mr Maharaj on 7th March 2012) this Court needs to proceed to judgment in this case, with the recovery of stamp duty and penalty on the said documents, referred to the Deputy Registrar for implementation if
35 possible.

[19] Though the Plaintiff’s Counsel made no effort to submit any case law or authorities empowering Court to accept such documents even after trial, upon being duly stamped, the Privy Council case of *Nijie and Others v Amadou Cora (The Gambia)* [1997] UKPC 41 (28TH July 1997) at paragraph 7 as per **Lord Clyde** states as follows(with Lord Goff of Chieveley, Lord Griffiths, Lord
40 Jauncey of Tulichettle, Lord Steyn agreeing);

“7. Furthermore it does not seem to their Lordships that the Court was correct in believing that it had no discretion but to reject the evidence. No doubt it is of importance that the proper duty should be paid on all instruments which are to be given
45 in evidence but where the matter is open to remedy it is preferable that the duty be paid with any due penalty so as to enable the ends of justice to be served than that the courts should be deprived of evidence which might be material to a proper resolution of the case which is being tried. The powers of the Court of Appeal in Gambia appear to be sufficiently wide to enable the omission to be rectified without the necessity of rejecting all the documents which were not duly stamped. Precisely how as matter of procedure
50 the court should decide to achieve a remedy in such circumstances must be a problem for the Gambian courts to decide as a matter peculiarly within their own jurisdiction.

5 *So far as the present case is concerned the documents had already been admitted in evidence, albeit contrary to the Act, but a late stamping under the eye or at the order of the Court of Appeal could have given a retrospective validation of what had been done and any possible rejection of the evidence obviated. The documents have now been stamped and their Lordships have had no hesitation in taking them into consideration.”*

Though this Court gave the opportunity by notice to both parties to produce the original documents and have them or their copies denoted as provision within the Stamp Duties Act appear to exist even to stamp a copy in the absence of the original, the Plaintiff opted not to do so.

10 [20] In *Ratu No 2 v Native Land Development Corporation* [1987] FJSC 9; [1991] 37 FLR 146 (17 February 1987) Cullinan J citing two other authorities stated as follows (under “Miscellaneous Submissions” unnumbered 6th paragraph);

15 “In any event, insufficient stamping does not invalidate the document, and is a matter which can be subsequently rectified (see the cases of *Rauzia Mohammed v ANZ Banking Group FCA Repts 85/398* per Kermode J. at 3 and *Mar & Ors. v NBF & ANZ* (Suva Civ. 880/1985) 25/26).”

20 [21] In *Igor v Narodetsky* [2004] FJHC 321; HBC0459.2004 (13 December 2004), Gerard Winter J observed (under the heading “Preliminary Arguments” at the second unnumbered paragraph);

25 *“The pledge made to secure the loan was recorded in writing. It was apparent from the face of the documents that they had not been stamped. This was in breach of s 29(1) (sic.) of the Stamp Duties Act (Cap 205). The s requires that all instruments be stamped with duty for the various distinct matters contained in the document. If the document is not stamped then s 41 provides that no instrument or agreement is admissible at law or equity unless and until it is duly stamped. The Act goes on in s 100(1) to provide that any (sic.) document which ought to be stamped shall be invalid unless it is properly stamped. The Courts are prohibited from allowing any unstamped documents into evidence.”*

30 This Court respectfully differs with the view of Winters J, expressed with regard to s 100(1) as the said section applies, in the view of this Court with regard to documents under Part IV of the Stamp Duties Act and not in respect of ‘any’ document as herein before set out.

35 [22] In the case of *Prabha Wati v Nardeo Mishra HBC 37 OF 2003* (unreported judgment of 21/4/2010 of this Court) this Court discovered that a particular document was not stamped in the course of writing the judgment, and consequently the judgment was differed till the stamp duty and penalty was recovered and the document duly denoted. However it was the original document
40 that was produced in evidence in that case and the Counsel graciously conceded their error in not bringing the non stamping to the attention of Court. In that case this Court advised the Deputy Registrar in writing of the duty cast on the officers of Court by s 39 and other provisions of the Stamp Duties Act, and to train the officers accordingly.

45 [23] However whether such documents are duly stamped or not is not a matter for the discretion of the parties, and when detected it casts a burden on the officers of the Court as envisaged under s 39(2) to detain the document, transmit to the Commissioner and to recover the stamp duty and the penalty, in view of the mandatory nature of the word “shall” therein. ***However the receiving of the***
50 ***document in evidence or not is left to the discretion of Court*** by the use of the word “may” in the second limb of s 39(1), provided “*the instrument is one which*

may legally be stamped after execution". Such are the terms upon which a document which is not stamped or insufficiently stamped when produced may be admitted in evidence provided it is brought to the attention of the Court, as s 41 of the Stamp Duties Act that follows thereafter prohibits the document to "be
5 *pleaded or given in evidence or admitted to be good, useful or available in law or equity unless it is duly stamped in accordance with the law in force at the time when it was first executed*". See s 41 of the Stamp Duties Act above.

[24] Mr Iqbal Khan appearing for the Plaintiff on the 7th March 2012 agreed on behalf of the Plaintiff with the submission of the Defendant that no documents
10 can be now admitted after the trial was concluded as referred to above. It may well be due to the fact that the Defendant is now deprived of leading evidence which they may well have done had the document duly denoted or the original duly stamped had been produced at the trial. Therefore even if the documents
15 ABD1 or ABD2 are duly denoted and Produced or their originals duly stamped are produced this Court has the discretion to receive or not to receive them as set out above.

[25] On Mr Iqbal Khan agreeing to Mr Maharaj's submission that no documents should now be received by this Court *it would not be for this Court*
20 *to exercise its discretion* and admit any documents including even the originals of ABD1 or ABD2 at this stage after the trial, as it would deprive the Defendant the right to a unimpeded defence, a right which even the Plaintiff's Counsel on their behalf has conceded. The Defendant may well have led evidence of the Defendants or submitted other documents or even further submissions and even
25 concentrated on other defenses had the originals of the said documents or the denoted documents were produced at the trial or even immediately after the trial on the Plaintiff being alerted by the Defendants written submissions, whereas this Court could have considered even reopening the trial. However now a considerable period of time has lapsed and to admit even the originals would
30 cause prejudice to the Defendants and affect the sanctity of a trial under the adversarial system. As much as sanitation is paramount to a surgical procedure so is sanctity to a trial. As such this Court in this particular case and limited to its circumstances is in agreement with both Counsels that the originals of ABD1 and ABD2 duly stamped or denoted ought not be received by Court and instead
35 proceed on the basis that originals of ABD1 and ABD2 are not before Court. The Court of Appeal may exercising its discretion admit the documents and deal with the matter as it deems fit as set out in the afore cited Privy Council case, as it may even order a re-trial, which this Court exercising original jurisdiction cannot do.

[26] The **Indemnity, Guarantee and Bailment Act [Cap 232]**, at s 59
40 prescribes as follows;

59. No action shall be brought-

(a) whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate; or

45 (b) whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person; or

(c) to charge any person upon any agreement made upon consideration of marriage; or

(d) upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them; or

50 (e) upon any agreement that is not to be performed within the space of one year from the making thereof, *unless the agreement upon which such action is to be brought or*

some memorandum or note *thereof is in writing and signed by the party to be charged* there or some other person thereunto by him lawfully authorised.

5 [27] Therefore in the absence of any other Agreements in WRITING as required above, no action can subsist against the Defendants as per s 59(b) of the **Indemnity, Guarantee and Bailment Act [Cap 232]**.

10 [28] In view of the aforesaid dicta in the Privy Council case *Nijie and Others v Amadou Cora* and the observations of their Lordships in the afore quoted Fijian cases *Ratu No 2 v Native Land Development Corporation*, *Rauzia Mohammed v ANZ Banking Group* (Also at 39 FLR 136 at 139E per Kermodé J), and *Igor v Narodetsky* this Court could have received the Documents ABD1 and ABD2 even after the conclusion of the trial provided the stamp duty and the penalty is paid and denoted by the Commissioner of Stamps as per the Stamp Duties Act *and if there was no special agreement not to do so as in this case. However*
15 *they are not so denoted, and the Plaintiff and the Defendant agreeing that no other documents including the originals should be accepted except to refer to the Deputy Registrar for the separate purpose of recovery of stamp duty, (therefore as such) the said documents cannot be “pleaded or given in evidence or admitted to be good, useful or available in law or equity” as prohibited by s 41 of the Stamp Duties Act. On the face of the documents*
20 *ABD1 and ABD2 (photocopies) it appears as if the said documents are not duly stamped in accordance with the law in force at the time when it was first executed, further inviting the prohibition in s 41. In the premises the Plaintiffs action against the 1st and 2nd Defendants on the respective*
25 *Guarantee Agreements ABD1 and ABD2 would fail as there is no other evidence of an agreement to guarantee in writing.*

30 [29] Given the circumstances of this case as the Defendants are avoiding liability on a technicality, and given the grace of the Plaintiff in agreeing not to receive the original documents, this court shall not order costs against the Plaintiff.

[30] As such the necessity to consider the evidence and the issues raised do not arise and the Plaintiffs action is dismissed without costs.

Application dismissed.

Michael Wells
Solicitor

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