

In the High Court of Fiji at Suva
Civil Jurisdiction
HBC 341 of 2011
ALSPEC Holdings Limited
Plaintiff

vs

Ministry of Works, Transport and Public Utilities
First defendant
And
The Attorney General of Fiji
Second defendant

COUNSEL : Mr G. O'Driscoll for the plaintiff
Ms O. Solimailagi with Ms M.Ali for the defendants
Date of hearing : 12th, 13th and 14th July, 2017
Date of Ruling : 17th July, 2017

Ruling

1. This Ruling eventuates from an objection taken at the hearing to the tendering in evidence of the Contract entered between the parties.
2. It emerged in the course of the evidence in chief of PW2 that counsel for the plaintiff, Mr O'Driscoll did not have a signed and complete Contract(Contract). At that stage, counsel for the defendants, Ms Solimailagi agreed to give a copy of that Contract to Mr O'Driscoll for the limited purpose of the document being marked for identification.
3. In leading the evidence of PW3,(the Managing Director of the plaintiff) when Mr O'Driscoll moved to mark the Contract, Ms Solimailagi objected on the grounds that she had tendered it for the limited purpose mentioned in the preceding paragraph and the plaintiff cannot rely on the defendant's document to establish its case.
4. Ms Solimailagi requested a written Ruling on this point, in order to file an interlocutory appeal. Since the objection was taken on Friday,(14th July,2017) and hearing would resume on Monday,17th July,2017, I agreed to adjourn the case to enable counsel to file written submissions by close of day and deliver my Ruling.

5. The written submissions filed on behalf of the defendant submits that a miscarriage of justice would arise, if the plaintiff is allowed to tender in evidence the defendant's signed copy of the Contract. The defendants would not have agreed to provide a copy to the plaintiff, if the intention was to tender it in evidence. It is submitted further that the plaintiff be estopped from tendering in evidence the document "*conditionally provided*".
6. It emerged that there was no application for discovery and inspection of documents nor was an application made under Or24,r10 by solicitors for the plaintiff to solicitors for the defendant for a copy of the Contract.
7. Mr O'Driscoll, in his written submissions has referred to Or24, r12 and r13, which empowers the Court to order a party to produce a document in his possession if it is of the opinion that it is "*necessary.. for disposing fairly of the cause*".
8. I do not find it necessary to invoke Or24, r12 and13, since a copy of the document has already been given to the opposing counsel.
9. In my view, the contention that a copy of the Contract was given to the opposing counsel to produce it through a witness for the limited purpose of identification is unacceptable for the following reasons.
10. A document is marked for identification ("*MFF*") through a witness, if he or she was not a party to the same. When a document is sought to be marked in evidence, the Court is concerned with the following matters: firstly, whether the witness has laid the background to the document and secondly, the authenticity and relevance of the document to the issue before Court.
11. In the instant case, PW3 was a signatory to the Contract. It necessarily follows that the Contract can be produced by him.

12. Moreover, paragraph 3 of the statement of defence admits that the Contract relied on by the plaintiff was entered into by the parties. The Contract is contained in Schedule 1 of the defendant's list of documents and does not fall within the category of documents for which confidentiality is claimed, in contrast to documents in Schedule 11 of the defendant's list. Or 27,r4 provides a party is deemed to admit any document in its list, Mr O' Driscoll points out in his written submissions .

13. The objection taken by the defendant fails.

14. **Orders**

- a. The plaintiff is entitled to produce the Contract through its witness.
- b. I make no order as to costs.

A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam

Judge

17th July, 2017

