IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. **HBC 246 of 2019 LTK**

Between : **LOMANISUE PROPERTY HOLDINGS LIMITED** a limited liability company having its registered office at G. H. Whiteside & C0., 211 Ratu Sukuna Road, Suva, Fiji.

Plaintiff

And : **HALCYON PTE LIMITED** a limited liability company having its registered office at Level 6 FNPF Place, Suva, Fiji.

First Defendant

: **DAVID JAMES MICHEAL WATSON** whose last known address is 26 Springwater Crescent, Parkinson, Queensland 4115, Australia.

Second Defendant

: **RODERICK HENDERSON** whose last known address is The Granary, Nunnery Place, Thetford/Banbury, Oxfordshire, United Kingdom.

Third Defendant

: **SARA CATHERINE RIDGWAY** whose last known address is 67 Calmsden, Cirencester, Glouchester, GL7 5 ET United Kingdom, Director

Fourth Defendant

: **MONASH FINANCE CORPORATION LIMITED** a limited liability company incorporated in Hong Kong having its registered office at Level 20, 1 FC, Harbour View Road Central, Hong Kong.

Fifth Defendant

: **MARTIN GEOFFREY BURKE** whose last known address is 731/25 Wentworth Street, Manly, Sydney, NSW 2095, Australia.

Sixth Defendant

: **NEIL LINDSAY YOUREN** whose last known address is 106 St Georges Road, Toorak, Melbourne, Victoria, Australia.

Seventh Defendant

: **KANPMAN CLARK & CO PTY LIMITED** a limited liability company incorporated in Australia, Australian Company Number 062807578, having its registered office at Gold Coast, Brisbane, Australia.

Eight Defendant

: **GLORIA FLORINE McNAMARA** and **PAUL THOMPSON** as the personal representative of the **ESTATE OF KENNETH JOHN McNAMARA** whose last known address is 194 Easthill Drive, Robina, Gold Coast, Queensland, Australia 4230.

Nineth Defendant

Representation:

Plaintiff: Mr. J. Liganivai & Ms S Kumar (Munro Leys)
1st, 2nd 3rd and 4th Defendant: No Appearances and Representation.
5th, 6th & 7th Defendant: Mr. S Namata (Lal Patel Bale)

Date of Hearing: 15th October 2026

Ruling

A. Introduction

[1] The lawyers for the Plaintiff filed summons seeking file further and better list and specific discovery of documents from the 6th and 7th Defendants.

[2] The summons was filed pursuant to **Order 24 rule 7** of the High Court Rules 1988. It was filed with an affidavit in support of Miichael Robert Garnham.

B. The Law

[3] The law on discovery and inspection is set out in Order 24 of the High Court Rules 1988. It is comprehensive. Order 24 Rule 7 deals with specific discovery.

C. The Submissions

[4] The submission for the Plaintiff is that the Defendant's AVLD does not disclose all the documents that are or have been in the 5th, 6th and 7th Defendant's possession, custody or power. The Defendant's list only 3 documents.

[5] The Plaintiff's position is that there was extensive period of correspondence, internal communications, agreements, record of meetings, copy of loan offer and copy of SWIFT transaction, etc. referred to in the Statement of Defence of the Defendant's. The schedule in the summon identifies the source and the documents

[6] The submission for the Defendant is that the onus is on the Plaintiff as the Applicant to establish by affidavit evidence the identity of the documents they are seeking, that the specific document do in fact exist or have existed, the relevance of the documents and

show that the documents were in physical possession, custody or power of the opposing party.

[7] For the Defendants it is submitted that the Courts require that affidavit evidence must establish and satisfy each requirement before the court exercises any discretion to grant orders for further discovery.

D. Determination

[8] Order 24 Rule 7 of the High Court Rules 1988, provides as follows:

> *" 7.-(1) Subject to rule 8, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his [or her] possession, custody or power, and if not than in his [or her] possession, custody or power, when he [or she] parted with it and what has become of it.*
>
> (*2) An order may be made against a party under this rule not withstanding that he [or she] may already have made or been required to make a list of documents or affidavit under rule 2 or rule 3.*
>
> *(3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his [or her] possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter."*

[9] In **Berkeley Administration Inc and Ors v. McClelland and Ors [1990] All ER 958, FSR 381** at 382 the principles governing specific discovery are set out as follows:

> *"1. There is no jurisdiction to make an order under RSC, O.24, r.7, for the production of documents unless (a) there is sufficient evidence that the documents exist which the other party has not disclosed; (b) the documents relates to matters in issue in the action; (c) there is sufficient evidence that the document is in the possession, custody or power of the other party.*
>
> *2. When it is established that those three prerequisites for jurisdiction exists, the Court has jurisdiction whether or not to order disclosure.*
>
> *3. The order must identify with precision the document or documents or categories of document which are required to be disclosed, for otherwise the person making the list may find himself/herself in serious trouble for swearing to a false affidavit even though doing her/his best to give an honest disclosure."*

[10] The principles set out in **Berkeley** have been applied by our Courts.

[11] The documents that are specified to some extent by the Plaintiff that they are seeking discovery of in this matter are the contract entered into between the 5th Defendant and the 1st Defendant for the purchase of the property, copy of the SWIFT transaction note issued on 23rd July 2019 showing transfer of USD 200,000, 000 from Barclays Bank PLC, United Kingdom to United Overseas Bank Limited in Singapore, and copy of the

email dated 4th September 2019 from the 7th Defendant to the 2nd Defendant attaching or referring to the SWIFT transaction note issued on 23rd July 2019.

[12] A number of question arise when a document or details of the required document are not provided. As to the request for the contract entered into by the 5th Defendant and the 1st Defendant, the specifics of the property are not provided. There might have been other property dealing entered into between the parties.

[13] The issue about the SWIFT transaction note being issued does not identify which party has that in their possession or custody. If I order for its production it must be directed to the relevant party.

[14] The documents must be clearly identified. It is not enough to refer to some document without clearly outlining what that document is. The documents details must be provided. It is specific discovery. The specifics of the documents must be provided.

[15] The reference of the documents sought by the Plaintiff are not specifically identified and whether the documents sought to be discovered are in possession of the relevant Defendant or Defendants.

[16] I find that the application is genuine. What the Plaintiff is seeking may be relevant. However the difficulty they are facing is that they do not have the details of what the Defendants have. The Defendants themselves have not been disclosing and discovering the documents. The Plaintiff picked up from the Statement of Defence reference to various documents by the Defendants. The Defendants for their part need to discover all the relevant documents in this matter.

E. Court Orders

[17] The Defendants are to discover all the relevant documents in this matter within 21 days.

[18] No orders as to costs.

HIGH COURT OF FIJI
SUVA

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Hon. Justice Chaitanya S. C. A. Lakshman
Puisne Judge

2nd November 2026