

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

**Civil Action No. HBC 489 of 2004**

**BETWEEN** : **P. D. PATEL & CO. PTY LIMITED**

**PLAINTIFF**

**AND** : **CARPENTERS SHIPPING**

**DEFENDANT**

**BEFORE** : **Honourable Justice Kamal Kumar**

**DATE OF HEARING** : 21 August, 2013

**DATE OF JUDGMENT** : 5 September 2014

**COUNSEL** : Mr D. Sharma and Ms J. Kumar for the Plaintiff  
Ms B. Narayan for the Defendant

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**JUDGMENT**

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## **1.0 Introduction**

- 1.1 On 1<sup>st</sup> November 2004, Plaintiff filed Writ of Summons and Statement of Claim seeking Judgment in the sum of US\$17,819.45 interest and costs against Defendant as a result of container containing Plaintiff's fireworks ("**the container**") being washed overboard.
- 1.2 On 15 and 29 November 2004, Defendant and Plaintiff filed their Statement of Defence and Reply to Defence respectively.
- 1.3 On 25 July 2006, Plaintiff filed Summons for Directions which was listed to be called on 16 August 2006.
- 1.4 Subsequently Notice to Show Cause was served on the Plaintiff and this matter was called on 3 August 2006, before his Lordship Justice Coventary (as he then was) when this action was struck out with liberty to re-instate upon receipt of Application by 29 September 2006.
- 1.5 On 26 September 2006, Plaintiff filed Notice of Motion to re-instate this matter which motion was called on 19 October 2006, before Master J. Udit (as he then was) when this matter was re-instated to the Cause List and Plaintiff was ordered to pay Defendant's costs assessed at \$300.00.
- 1.6 On 24 October 2006, Plaintiff filed Summons seeking further directions from Court and to set time table for trial and on 16 November 2006, Master J. Udit (as he then was) directed parties to file Affidavit Verifying List of Documents and adjourned this matter to 19 January 2007.
- 1.7 On 8 January 2007, Defendant filed its Affidavit Verifying List of Documents.
- 1.8 On 19 January 2007, Plaintiff sought further time to file its Affidavit Verifying List of Documents and time was again extended on 20 April, 2007, and 15 May 2007.

- 1.9 On 15 May 2007, Court made an unless Order, that if the Plaintiff did not proceed with this case by 29 June 2007, this action is struck out.
- 1.10 On 15 May 2007, Plaintiff was granted leave to amend its Statement of Claim.
- 1.11 On 7 June 2007, Plaintiff filed its Affidavit Verifying List of Documents.
- 1.12 On 9 October 2007, on Plaintiff's Application by way of Notice of Motion, time for filing of the Amended Statement of Claim was extended to 16 October, 2007.
- 1.13 On 11 October 2007, Plaintiff filed Amended Statement of Claim.
- 1.14 On 30 October 2007, Defendant was directed to file Defence to Amended Statement of Claim by 15 November 2007 and parties were directed to exchange documents, attend to Pre-Trial Conference ("PTC"), file PTC Minutes and Copy Pleadings and this matter was adjourned to 1<sup>st</sup> February 2008 for referral to a Judge.
- 1.15 On 21 November 2007, Plaintiff filed Statement of Defence to Amended Statement of Claim.
- 1.16 Except for filing of Statement of Defence by the Defendant, parties failed to comply with other directions given on 30 October 2007, and as a result time was extended on 1 February 2008, 2 April 2008, 22 May 2008 and finally on 21 July, 2008 when Court made an unless Order.
- 1.17 On 9 July 2008, PTC Minutes was filed and on 23 July 2008, Copy Pleadings, Agreed Bundle of Documents and Summons to Enter Action for Trial were filed.
- 1.18 On 16 June 2009, this matter was called before his Lordship Justice Inoke (as he then was) when due to non-appearance of Defendant's Counsel his Lordship directed Notice of Adjourned Hearing to be served on the parties.

- 1.19 This matter was next called on 2 June 2010 before Master J. Udit and he adjourned this matter to 5 October 2010, before his Lordship Justice Hettiarachchi (as he then was) to fix trial date.
- 1.20 Due to non-appearance of Plaintiff's Counsel on 5 October 2010, this matter was adjourned to 12 October 2010, for mention.
- 1.21 On 12 October 2010, this matter was set down for trial on 4 May 2011 at 9.45am.
- 1.22 On 4 May 2011, this matter was adjourned by Court to 22 June, 2011 to fix fresh trial date.
- 1.23 On 27 June 2011, this matter was adjourned for hearing on 16 May 2012 at 9.45am which hearing did not take place and thus matter was re-listed for hearing on 2 November 2012 which hearing date was once again vacated.
- 1.24 Thereafter this matter was called in this Court on 6 June 2013, when it was adjourned to 21 August 2013 for trial.
- 1.25 Trial commenced on 21 August 2013 with both parties calling one witness each. At the end of the trial and with the consent of the Counsel I gave following directions:-
- (i) Plaintiff to file and serve Submissions by 20 September, 2013;
  - (ii) Defendant to file and serve Submissions by 18 October 2013;
  - (iii) Plaintiff to file and serve Submissions in Reply by 1 November 2013;
  - (iv) This matter be adjourned to 8 November 2013, for review.
- 1.26 On 20 September 2013, Plaintiff filed its Submissions but Defendant did not file its Submissions as directed.
- 1.27 This matter was called on 13 November 2013, instead of 8 November 2013, when Defendant was granted leave to file its Submissions by 29 November 2013, with Plaintiff to file and serve Reply to Submissions by 13 December 2013, and this matter was adjourned for Judgment on Notice.

## **2.0 Background/Undisputed Facts**

- 2.1 On or about 16 September 2002, Plaintiff purchased fireworks from Bethal Weuhong I/E Trading Co. Ltd ("**BW**") of China for the sum of US\$17,819.45 including 10% insurance value which was subject to Bill of Lading No. JHKHKG000072 (Exhibits P4, P5 and P6).
- 2.2 The fireworks were placed in the container and shipped by BW as Shipper to the Plaintiff.
- 2.3 The container containing the fireworks was shipped to Plaintiff by vessel Coral Islander Voyager VO77 owned and operated by New Guinea Pacific Line ("**NGPL**").
- 2.4 The shipment was insured by BW with the People's Insurance Company of China ("**insurer**") for the sum US\$17,819.45 for the benefit of the Plaintiff (Exhibit P7) through Lloyds.
- 2.5 On or about 9 October 2002, Circular was sent by NGPL through the Defendant to Plaintiff informing the Plaintiff that the vessel Coral Islander Voyager V077 was subjected to extreme weather conditions and encountered typhoon which resulted in the container being washed overboard.
- 2.6 Defendant acted as Agent for NGPL and as Local Agent for Lloyds.
- 2.7 Defendant by its employee assisted Plaintiff in completing the claims form which was submitted by Plaintiff to Defendant as Agent for Lloyds and NGPL.
- 2.8 On or about 18 October 2002, Defendant wrote to Plaintiff advising inter-alia that:-
  - (a) The insurers are not in a position to consider Plaintiff's claim without following documents/information

- (i) Casualty date;
  - (ii) Casualty position (longitude and latitude)
  - (iii) Name of Typhoon
  - (iv) Weather forecast about **“Typhoon”** made by local weather authority;
  - (v) **“Sea protest”** confirmed by local Marine Commission/Marine Bureau
  - (vi) Deck Log Book
  - (vii) Engine Log Book
  - (viii) Shipping Company’s report to P & I Club about the **“Typhoon”** and Casualty.
- (b) NGPL will not provide such information and according to NGPL, Plaintiff and insurer do not have a right to any information unless the matter goes to court.
- (c) Marine Shipping claim will not be processed by NGPL until claim is re-lodged by insurer.
- (d) Defendant as Agent of the insurer will not be able to proceed further until such time the required documents/information are provided.

2.9 This resulted in Plaintiff filing this claim against the Defendant, who is the local Agent for Lloyds and NGPL.

### **3.0 Law**

3.1 The general rule as rightly submitted by Plaintiff in its Submission and conceded by the Defendant is that *“where a person contracts as agents for a principal, the contract is the contract of the principal and not that of the agent; and prima facie, at common law the only person who may sue is the principal and only person who can be sued is the principal.”* **Montmerie v. U.K. Mutual S.S. Assn Ltd** [1891] 1QB 370 at 371.

3.2 In **Phonogram Ltd v. Lane** [1981] 3 ALLER 182 Lord Justice Shaw at page 187 stated as follows:-

*“The general principle is, of course, that a person who makes a contract ostensible as an agent cannot afterwards sue or be sued on it...”*

- 3.3 The general rule as stated above is subject to certain exceptions.
- 3.4 It is well settled that a third party can sue an Agent in negligence if the Agent has committed a tortious act, which resulted in third party suffering loss and damage.
- 3.5 In respect to contract one of the exceptions is where the Agent contracts with third party on behalf of a company which is not yet incorporated.
- 3.6 In ***Phonogram Ltd v. Lane*** case referred to by the Plaintiff in its submission the Agent executed contract for company yet to be formed. In this case the Agent was held to liable pursuant to s9(2) of the European Communities Act 1972 (UK) which provided:-

*“Where a contract purports to be made by a company, or by a person as agent for a company, at a time when the company has not been formed, the subject to any agreement to the contrary the contract shall have effect as a contract entered into by the person purporting to act for the company or as agent for it, and he shall be personally liable on the contract accordingly.”*

- 3.7 The common law position was stated by his Lordship Justice Donaldson in **Teheran - Europe Co. Ltd v. S. T. Belton (Tractors) Ltd** [1968] 2 Q.B. 53 at page 60 as follows:-

*“An Agent can conclude a contract on behalf of his principal in one of three ways:*

- (a) *By creating privity of contract between the third party and his principal without himself becoming a party to the contract. The principal need not be named but the contract must show clearly that the agent was acting as such. Familiar examples are*

contracts made by X as agents and signed by X, the signature being clausued “as agents only.” The consequence of such an arrangement is that the third party can only sue, and be sued by, the principal.

- (b) *By creating privity of contract between the third party and his principal, whilst also himself becoming a party to the contract. The consequence of this arrangement is that the third party has an option whether to sue the agent or the principal, although this is of little practical value if he does not know of the principal’s existence. Equally the third party is liable to be sued either by the agent or by the principal. Where both agent and principal are privy to the contract, questions of election can arise (see *Clarkson Booker Ltd. v. Andjel* [1964] 2Q.B. 775; [1964]) but no such question arises in this case.*
- (c) *By creating privity of contract between himself and the third party, but no such privity between the third party and his principal. In other words, in relation to the third party he is a principal, but in relation to his principal he is an agent. The consequence of this arrangement is that the only person who can sue the third party or be sued by him is the agent.”*

3.8 The above principle was adopted with approval in **Australian Trade Commission v. Goodman Fielder Industries Ltd** (1992) 36 FCR 517.

3.9 Agent can also be liable if he/she enters into a contract on behalf of undisclosed principal with the third party.

***Montgomerie (Supra)*** page 372

3.10 The test to be applied in determining whether Agent is personally liable is objective test.

***Montgomerie (Supra)***

#### **4.0 Plaintiff’s Case**



- 4.1 Plaintiff's Counsel in his opening address recited the facts of the case which is not much different to the facts stated under the heading Background/Undisputed Facts in this Judgment.
- 4.2 Plaintiff called Mr Vinay Patel, Director of Plaintiff Company as its only witness.
- 4.3 Mr Patel gave evidence that:-
- (a) Upon receipt of Bill of Lading, Plaintiff purchased fireworks from BW of China for US\$16,199.50 plus 10% insurance on value of goods;
  - (b) Mr Patel was referred to Exhibits P3, P4, P5 and P6 being copies of Bill of Lading, Invoice No. WH2002109, packing list and copy of Certificate from BW which he confirmed as documents relating to purchase of fireworks;
  - (c) Fireworks were packed in cartons and then loaded into the container on top of each other;
  - (d) The fireworks were shipped through vessel Coral Islander Voyager V077 owned and operated NGPL to be offloaded in Suva;
  - (e) The consignment was insured and premium was paid by Plaintiff;
  - (f) Insurer was People's Insurance Corporation of China (Exhibit P7);
  - (g) Plaintiff received copy of Circular from NGPL advising that the container was washed overboard because of typhoon somewhere in China (Exhibit P2);
  - (h) If anything happened to the consignment Plaintiff would lodge claim with insurance agent which is the Defendant;
  - (i) To lodge insurance claim Plaintiff would contact Agent of the insurer in Fiji;

- (j) On 14 October 2002, Plaintiff wrote to Defendant as Agents for the insurer and NGPL lodging claim in the sum US\$17,819.45 being invoiced value of fireworks plus 10% insurance premium (“**the claim**”) (Exhibit P8 and P9);
- (k) On 18 October 2002, Defendant wrote to Plaintiff advising that insurance company required additional documents/information (Exhibit P10);
- (l) On 21 October 2012, Defendant wrote to Plaintiff advising that insurer has mentioned that the Plaintiff as consignee has right to file legal proceedings against NGPL (Exhibit P11);
- (m) On 21 October 2002, Defendant wrote to Plaintiff advising that NGPL made it clear that Plaintiff does not have a right to any information concerning typhoon unless the matter goes to Court (Exhibit P12);
- (n) On 24 October 2002, Plaintiff wrote to Defendant stating that if matter is not sorted out it will take it up with Lloyds of London (Exhibit P13);
- (o) On 24 October 2012, Defendant wrote to Plaintiff informing it of the need to provide the documents/information sought to process its claim and that if documents/information is not received within reasonable time claim will be declined (Exhibit P14);
- (p) On 24 October 2002, Plaintiff responded to Defendant’s letter;
- (q) On 24 October 2002, Defendant wrote to Plaintiff advising it to provide information and of its right to take legal action against NGPL (Exhibit P16);
- (r) Defendant was acting as Agent for carrier NGPL and the insurer;

- (s) All dealings regarding the release of container and insurance claim was with Defendant;
- (t) Plaintiff has not received the information until date of trial and have not received any part of the claim;
- (u) Plaintiff is seeking judgement for US\$17,819.45 plus interest and costs.

4.4 During cross-examination Mr Patel stated that:-

- (a) All dealings were conducted by his father Mr Arun Patel and he is giving evidence from company records;
- (b) Three parties to Bill of Lading (Exhibit 2) are Shipper (BW), Consignee (Plaintiff) and Carrier (NGPL);
- (c) Defendant's name does not appear in the Bill of Lading;
- (d) He is not aware about terms and conditions stated in the Bill of Lading;
- (e) Parties to the Insurance Policy were the insurer, the shipper (BW) and the Consignee (Plaintiff);
- (f) All claims were to be lodged at Local Agent of Lloyds which is Carpenters;
- (g) Not aware who assisted his father in preparing the claim.

The remaining evidence of Mr Patel was not that different to that given during examination in chief.

## **5.0 Defendant's Case**

5.1 Defendant called Mr Narendra Prakash, Manager Quality Insurance - Lloyd's and Manager Shipping Claim - Carpenters Shipping.

5.2 Mr Prakash gave evidence during examination in chief that:-

- (i) He was employed in the above position for thirty four years and has been handling claim for entire thirty four years;
- (ii) He got involved in respect to claim by Plaintiff when he received claim from Plaintiff;
- (iii) Defendant acted as Agent for Carrier (NGPL) and their duty is to apply for Fiji Revenue and Customs Authority clearance and communicate with Ports Authority, Bio Security and other relevant authorities prior to vessel arriving at the wharf.
- (iv) Once container is discharged it is released to consignee/owner upon receipt of the Bill of Lading;
- (v) Defendant's primary role is to deliver cargo to the consignee;
- (vi) Defendant received Circular from NGPL (Exhibit P2) and forwarded it to Plaintiff;
- (vii) On 10 October 2002, Mr Arun Patel visited him and informed him that he had no knowledge as to how to handle this type of claim and asked for Mr Prakash's assistance;
- (viii) Out of courtesy he assisted Mr Patel to draft two letters both addressed to Defendant, one as Agent for Lloyds and one as Agent for NGPL;
- (ix) Plaintiff provided Original Bill of Lading, Policy, Invoice and Packing list which he enclosed with the letter as required by clause 4 of the Policy. Tally list is also required under the policy but under the circumstances it was not necessary;

- (x) No survey report was done as there was nothing to survey because the whole container was lost;
- (xi) Insurer informed that they required additional documents/information and knowing that Plaintiff will not be able to provide the required documents/information he wrote straight to NGPL requesting for additional documents;
- (xii) NGPL refused to provide the documents and stated that should Plaintiff or Insurer needed those documents they should go to court;
- (xiii) NGPL also informed that it will not process claim until insurer re-lodged the claim with NGPL;
- (xiv) He explained to Mr Arun Patel of Plaintiff, the course of action Plaintiff can take to obtain the documents;
- (xv) He tried to assist Plaintiff with best of his abilities but there are certain limits Defendant can go to;
- (xvi) P & I Club, the processing agent of NGPL liaised directly with Plaintiff and its lawyers regarding the claim lodged with NGPL;
- (xvii) P & I Club, by its letter dated 1 October 2003 (Exhibit D17) informed Plaintiff that in terms of Bill of Lading the contract being the Bill of Lading is governed by laws of Japan and pursuant to Carriage of Goods by Sea Act of Japan liability for accidents due to sea perils are exempted:
- (xviii) On 6 November 2003, P & I Club again wrote to Plaintiff's Solicitors (Exhibit D19) that Bill of Lading was governed by laws of Hong Kong and according to Hong Kong Law, Plaintiffs' claim is statute barred;
- (xix) On 31 December 2004, Defendant's lawyers informed Plaintiff's lawyers that Defendant was merely an Agent and not liable and

Plaintiff is welcome to negotiate with insurer or take action against it (Exhibit D21).

5.3 During cross-examination Mr. Prakash stated as follows:

- (i) Defendant acted as agents for NGPL and Lloyds (Agent for insurer);
- (ii) Defendant had written Agency Agreement with NGPL and not the Insurer;
- (iii) Defendant does not have any indemnity from NGPL;
- (iv) Defendant did not carry risk of loss of consignment;
- (v) Circular from NGPL (Exhibit P2) and other documents do not have NGPL's address;
- (vi) In sending circular to Plaintiff, Defendant was acting as Agent for NGPL;
- (vii) It was NGPL's prerogative as to how they handled the claim;
- (viii) Agreed that when NGPL's stated that they will provide specific details of the incident in the circular (Exhibit P2) NGPL misled Plaintiff;
- (ix) Supplier would have had the address of NGPL;
- (x) All claims were to be lodged at Local Lloyds Agent and this is the reason claim was received by the Defendant;
- (xi) Defendant was Lloyd's Local Agent;
- (xii) He drafted the claim letter (Exhibit P8 and P9) on 10 October, 2002 to assist the Plaintiff;
- (xiii) Denied that above letters were drafted on 14 October 2002;

- (xiv) Claim was lodged on 14 October 2002, by Plaintiff and he advised Plaintiff about documents required to be included as per the policy;
- (xv) Both claims were lodged with Defendant as Agents;
- (xvi) Both claims were valid claims;
- (xvii) He submitted claim lodged by Plaintiff to insurer and NGPL;
- (xviii) Informed Plaintiff of additional requirements as Agents for insurer;
- (xix) Additional documents/information required by insurer were in addition to what is required in the Policy;
- (xx) Cargo being washed away was an unusual case and that is the reason additional documents were required.
- (xxi) He only submitted documents stated in the Policy and additional documents were sought by insurer of which he was not aware when claim was lodged;
- (xxii) Informed about the requirements to Mr Arun Patel of Plaintiff;
- (xxiii) He denied the suggestion by Plaintiff's Counsel that he is saying all the above because he knows Mr Arun Patel was away overseas;
- (xxiv) Defendant did not have additional document/information required by the Insurer;
- (xxv) The word "we" in Exhibit P14 meant Carpenters Shipping as Agent of Insurer;
- (xxvi) He only knew about typhoon when he read the circular (Exhibit P2) from NGPL and he doesn't know anything about the details of the typhoon;

(xxvii) Defendant declined Plaintiff's claim on behalf its principal;

(xxviii) Defendant did not act as Agent for P & I Club.

5.4 During re-examination Mr. Prakash gave evidence that:-

- (i) As Agent for NGPL, Defendant has to comply with number of requirements for vessels to berth at the wharf including providing certificate of departure of vessels from last point of sailing to Fiji Revenue and Customs Authority (FRCA); obtaining permission to enter port; declare list of all crew members on board; provide their passport details, cargo to be offloaded at the wharf and cargo to loaded onto the vessel to FRCA; notifying Immigration and Health Authorities, Fiji Ports Corporation and Ports Authority of Fiji as to what is being offloaded;
- (ii) As agent for Insurer, Defendant's job is only to assist to facilitate processing of claims and act as instructed by Insurer;
- (iii) Plaintiff never requested for NGPL or Insurer's address from the Defendant;
- (iv) All correspondence from Defendant to Plaintiff by Defendant was as Agent for NGPL and Insurer;
- (v) Defendant as Agent cannot command its principal to what to do.

## **6.0 Findings**

After analysis of both parties evidence and submissions filed on behalf of the parties and facts stated under the heading Background/Undisputed facts, I find that:

- (i) Defendant was at all material times acting as Agent for NGPL, the Carrier and Insurer (PICC);



- (ii) Defendant's role as Agent for NGPL was to arrange clearance of all cargoes bound for Fiji and shipped in the vessel Coral Island Voyager V077 owned and operated by NGPL and attend to all matters as stated in Mr Prakash's evidence (see paragraph (5.4(i));
- (iii) Defendant acted as Local Agent for Lloyds who were Agents for the insurer (PICC);
- (iv) All transactions in relation to purchase of fireworks and its shipment were between the Plaintiff, BW (the shipper) and NGPL (the carrier);
- (v) All transactions in respect to insurance of the fireworks were between Plaintiff, BW (the shipper) and the Insurer (PICC);
- (vi) Defendant only became involved with the subject matter when it received circular from NGPL (Exhibit P2) notifying about the incident in which Plaintiff's consignment was washed overboard;
- (vii) Defendant as NGPL's Agent forwarded the circular to Plaintiff;
- (viii) Upon Plaintiff's director's (Mr. Arun Patel) request the Defendant by its Officer assisted Plaintiff in submitting Plaintiff's claim. Defendant by its Officer drafted claim letter on behalf of Plaintiff;
- (ix) Defendant only informed Plaintiff about the decision of NGPL and Insurer in respect to Plaintiff's claim;
- (x) Plaintiff at all material times acted as Agents for NGPL and Insurer and there was no contractual relationship between the Plaintiff and the Defendant.
- (xi) There was no representation by Defendant and/or its officers that Defendant will proceed, assess and pay its claim;

(xii) Plaintiff claimed that the use of the word “we” in letter dated 24 October 2002, from Defendant to Plaintiff (Exhibit P14) indicates that Defendant was processing claim itself. The use of the word “we” of itself cannot suggest that Defendant was writing the letter on its own right and not as Agent for NGPL and Insurer.

In fact Exhibits P14 was in response to letter dated 24 October 2002 from Plaintiff to Defendant as Lloyds Agent (Exhibit P13), which letter was addressed to Defendant as “**Lloyds Agency**”.

(xiii) Plaintiff was at all material times aware that Defendant was acting as Agent for NGPL and the Insurer.

(xiv) It is apparent that Plaintiff instituted this processing for sake of convenience as any claim that would have been filed in Japan or Hong Kong in terms of the Bill of Lading would have been too costly, and would have met with possible defences, that claim is exempted under Carriage of Goods by Sea Act (Japan) or that the claim is statute barred (Hong Kong) (Exhibits D1 and D2). In this regard I refer to following question asked by Counsel for the Plaintiff to Defendant’s witness during cross-examination:- “for US\$17,000.00 P.D. Patel has to go to Japan”.

(xv) The facts of this case does not fall within the exception in **Phonograms Ltd v. Lane** [1981] 3 ALLER 182 as submitted by the Plaintiff as it is apparent that both Principals of Defendant were duly incorporated when Defendant acted as their Agent and the facts of this case does not call for an exception to the general rule that an Agent is not liable to the acts of the Principal. Defendant did not create any privity of contract between itself and the Plaintiff **Teheran - Europe** (Supra).

**7.0** No question of ostensible authority arise here as Defendant has not entered into any contract or dealing with Plaintiff on behalf of the principal which it was not authorised to do. All dealings for purchase and shipment of the

consignment were between Plaintiff, BW (Shipper) and NGPL and all dealings for contract of insurance was between Plaintiff, BW and the Insurer (PICC).

**8.0** There is nothing to suggest that Defendant acted outside of its Principals authority.

**9.0** On the basis of my findings stated at paragraphs 6, 7 and 8 I find that Defendant is not liable for the loss suffered by the Plaintiff as a result of the container being washed overboard the vessel Coral Islander Voyager V077 owned and operated by NGPL.

**10.0 Costs**

I take into consideration the conduct of the counsel for both parties in filing Agreed Bundle of Documents and their cooperation with each other to ensure that trial was completed within a day. I take into account this is a 2004 matter and has been subject to show cause notice and unless orders.

**11.0 Order**

I make following orders:

- (i) Plaintiff's claim against the Defendant is dismissed.
- (ii) Plaintiff pay Defendant's costs assessed in the sum of \$3,000.00.



K. Kumar  
**JUDGE**

At Suva  
5 September, 2014

R. Patel Lawyers for the Plaintiff  
Lateef & Lateef for the Defendant