

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 142 of 2017

BETWEEN : **SOUTH PACIFIC FERTILIZER LTD (SPF)**, a duly incorporated Company having its registered office at Lautoka Waterfront Road, Vetari, Lautoka, Fiji

Plaintiff

AND : **ALLIED HARVEST INTERNATIONAL PTE LTD** a duly incorporated company having its registered office at 3 Anson road #34-02, Springleaf Tower, Singapore

Defendant

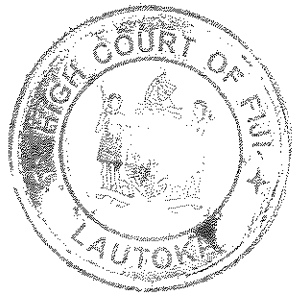
Counsel : Messrs Krishna & Co for the Plaintiff.
Ms Naidu for the Defendant

R U L I N G

1. The Originating Summons in this case is marked for hearing this morning. The said Originating Summons was filed on 14 July 2017.
2. However, just yesterday, the defendant filed an application seeking to stay the current proceedings pending the outcome of arbitral proceedings which they have filed at the Singapore International Arbitration Centre. There is an arbitration clause in the agreement between the plaintiff and the defendant that any dispute shall be referred to the SIAC.
3. The reference to Arbitration was filed on 11 October 2018. Notices were issued by the Singapore International Arbitration Centre on 22 October 2018.
4. Yesterday, when the application was brought before me, I directed the Registry not to issue the application and that I would deal with it in court this morning.
5. The issue in this case is simple. The defendant had shipped from Hong Kong a consignment of fertilisers. The plaintiff had paid for the consignment. However, unbeknownst to both parties, a third party had intercepted their arrangement by hacking into the computers of one of them. Masquerading as the defendant or as an agent of the

defendant, that third party then started communicating with the plaintiff. The result of all this was that the plaintiff ended up paying for the consignment into the account of the third party, thinking that it was paying to the defendant.

6. Should I stay proceedings to let the arbitration proceedings proceed?
7. It is not clear to me at this time whether or not the International Arbitration Act 2017 has come into force.
8. Mr. Krishna argues that the application for stay has come too late in the day. Ms. Naidu argues the benefits of arbitration as an ADR.
9. While I would readily defer the matter to arbitration in deference to the arbitration clause and the parties' agreement, the peculiar thing about this case is that the defendant has waited too long in the day and has filed the application on the date of hearing.
10. I say that bearing in mind that the plaintiff is equally bound by that clause and should have invoked it at the time the dispute arose. However, having said that, I accept the argument of Mr. Krishna that in light of the urgency of the matter in 2017 and the particular circumstances involved (i.e. goods had already arrived in port in Fiji when the defendant threatened to ship it back to Hong Kong in demanding payment), the more convenient forum for him was the local Court because he had to seek urgent injunctive relief initially to stop the defendant from shipping the goods back to Hong Kong.
11. At the end of the day, the question I ask is – is Fiji the more convenient forum now or should I defer the matter to Singapore for arbitration as per the parties' agreement.
12. In the meantime, I will ask the Registry to issue the application returnable on 22 November 2018 at 10.30am. Costs to the Plaintiff which I summarily assess at \$500.00.



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Anare Tuilevuka
JUDGE

25 October 2018.