

**D'Offay v Hoareau
(2003) SLR 145**

Francis CHANG-SAM for the Plaintiff
France BONTE for the Defendant

Ruling delivered on 2 October 2003 by:

JUDDOO J: This is an application for leave "to re-open the defence for the purpose of producing as evidence in the case two documents, namely a deed of sale dated 21 January 1957, transcribed in Volume 45 no 67, between Mr Leon Deltel and Mrs Marie-Therese D'Offay, nee Deltel, and a letter to the Registrar from the late Mrs Mario Therese D'Offay, dated 17 April 1994 duly registered in the Land Registry, Volume II, folio 46, on 19 April 1994.

It is averred on behalf of the Defendant that the documents are in support of the Defendant's averment set out in paragraph 2 of the amended defence dated 4 June 2002. It is further averred that the said two documents were put to the Plaintiff in cross-examination and were intended to be produced through a witness, namely the Land Registrar. However, due to the manner in which the witness (Land Registrar) was dealt with, Learned Counsel has consented to a date for "submissions" whilst omitting to have produced the two documents.

It is not disputed that a party may apply for leave to re-open his case to supply material evidence which had inadvertently been omitted vide:

Savy & Co (Seychelles) Ltd v The Salisbury (1971) SLR 218. In addition *Cross on Evidence* (4 ed NZ) at 237 states:

Evidence not led by inadvertence may be permitted to be called late, for the laxity of Counsel should not rebound to the detriment of his client, but not evidence which was deliberately not led at the correct time. Evidence may be led in late if no prejudice is caused to the party against whom it is tendered.

In the present case, it is disclosed from the reading of the proceedings of 22 February 2001 when the Plaintiff was facing cross-examination that the two documents, in an uncertified form, were then in the possession of Learned Counsel for the Defendant. The two uncertified documents were put to the Plaintiff as witness and he exhibited no knowledge thereto. Accordingly, it is not surprising for Learned Counsel for the defence to have elected to await his own witness before seeking to produce copies of the documents of which he would then presumably be in possession of certified copies. The Land Registrar was duly summoned as witness. There was no compulsion to include the two documents in the precipe for summons where a party could otherwise had obtained possession certified copies and may well seek to produce them through

the witness. Accordingly, I am satisfied that the Land Registrar was duly summoned.

It is certain that there had been several postponements due to the inability for certain documents to be physically brought to Court from the Land Registry and the Court embarked upon a compromise alternative to have copies of the document produced before this forum. I am satisfied that in the process, Learned Counsel inadvertently omitted to seek to produce documents which he had already put to the Plaintiff at an earlier stage of the proceedings and were, then, denied by the said witness. I am further satisfied that no prejudice is hereby caused to the Plaintiff. Accordingly, I grant leave for the Defendant to re-open their case for the purpose of seeking to produce in evidence the two documents attached to the notice of motion.

Record: Civil Side No 220 of 1999