

IN THE COURT OF APPEAL, FIJI ISLANDS  
ON APPEAL FROM THE HIGH COURT OF FIJI ISLANDS

CIVIL APPEAL NO. ABU0011 OF 2000S  
 (High Court Civil Action No. HBC 460 of 1999/L)

BETWEEN:

VINOD CHANDRA

*Appellant*

AND:

K.K.'S HARDWARE LIMITED

*Respondent*

In Chambers: The Hon. Mr. Justice Ian Thompson, Justice of Appeal

Hearing: Thursday, 11 May 2000, Suva

Counsel: Mr. Dorsami Naidu for the Appellant  
 Mr. Abhay Singh for the Respondent

Date of Decision: Friday, 12 May 2000

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**DECISION**

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This applicaiton is for leave to appeal against interlocutory orders made by Townsley J. in the High Court on 10 December 1999 and for such other orders as this Court deems just. Neither party addressed me in respect of any matter other than the granting of leave to appeal and costs.

The respondent is the plaintiff in the High Court action. He claims that the applicant owes him money for building materials supplied to him. The applicant's defence is that the materials were supplied to a company of which he was the managing director and not to him personally.

On 10 December 1999 the respondent applied for, and obtained in the High Court, orders requiring him to deliver his passport to the Court unless he provided by affidavit

a list of "free and unencumbered assets" to the value of \$16,393.93 or more or paid that amount into Court and ordering that before being allowed to leave the jurisdiction he was to provide the respondent with an affidavit listing all his assets anywhere and with a list of all his assets sold or otherwise disposed of during the preceding twelve months. Those are the orders against which the applicant seeks leave to appeal.

In an affidavit in support of his application to this Court the applicant says that the orders were initially made *ex parte* and that, when the *inter partes* hearing took place, the learned judge refused to allow his counsel to present arguments why the orders should be discharged, saying that the appellant had failed to comply with the first of them. In an affidavit in reply the respondent substantially admits that that was what occurred. It occurred on 23 December 1999.

On 14 December 1999 the applicant had filed in the High Court an affidavit to which he had exhibited copies of a native lease registered in his name, of a mortgage over it to secure a loan of \$88,000 and of a certified valuation of the lease with the buildings on the land as \$210,000. He says, therefore, that the learned judge should not have made any of the orders which he made, as he had shown that he had within the jurisdiction the means to pay the debt if judgment were given against him.

This Court is reluctant to grant leave to appeal against interlocutory orders of the High Court as doing so will often delay undesirably the hearing and determination of the action in that Court. In this instance the order is not fundamental to the proceedings in the High Court;

as I pointed out to Mr Singh, there is no reason why the action should not be proceeded with in the normal way, whether or not an appeal is pending in this Court against the interlocutory orders with which we are now concerned.

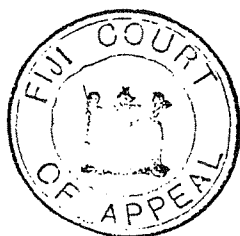
A defendant's liberty to travel out of Fiji is enshrined in section 34 of the Constitution of the Fiji Islands; it is, however, subject to restriction by an order of the Court if that is reasonably required to secure the fulfilment of an obligation, imposed on him by law (section 34 (7)(c)). Nevertheless such a restriction ought not to be imposed lightly and without full consideration of other alternatives for securing such compliance. In this instance the applicant has demonstrated that he has an arguable case that he had shown that he had the means to pay the amount claimed if judgment were given against him and that the orders were not necessary to secure the performance of his obligations.

I am satisfied that in this instance leave to appeal against the orders should be granted. However, I would urge the parties, instead of allowing the appeal to go to hearing, to negotiate an acceptable security for the discharge of the applicant's potential obligation. For instance, the applicant might provide appropriate evidence that the amount secured by the mortgage is still well below the value of the lease and that there has been no subsequent mortgage, and then consent to orders being made in the High Court restraining him from selling or otherwise disposing of the property or charging it or allowing the amount secured by the existing mortgage to increase, and granting a registrable charge over the property (which would need the consent of the Native Lands Trust Board) to a charge being registered to secure his potential liability to pay the sum claimed. Then the present orders in respect of which I am

granting leave to appeal could be discharged by consent.

I order that:

- (1) leave be granted to appeal against the orders made by Townsley J. on 23 December 1999;
- (2) the notice of appeal be filed within 14 days of to-day; and
- (3) the costs of these proceedings be costs in the appeal.



*Ian Thompson*  
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Mr. Justice Ian Thompson  
Justice of Appeal

**Solicitors:**

Messrs. Pillai, Naidu and Associates, Nadi for the Appellant  
Messrs. A.K. Singh Law, Solicitors, Nausori for the Respondent