

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 32 of 2012

BETWEEN : JAMES L PETERS and JIMMIE PETERS (presently of Portland Oregon United States of America but previously residing at Seashell Cove Resort, Savusavu, Nadi.

PLAINTIFFS

AND : SEASHELL @ MOMI LIMITED a limited liability company having its registered office at 142 Toorak Road, Suva and owner/proprietor at Seashell @ Momi Limited previously known as Seashell Cove Resort and situated at Momi Savusavu Nadi.

DEFENDANT

R U L I N G

1. The background to this case is set out in an interlocutory ruling which was handed down by this court in November 2014 and which is reported in paclii (Peters v Seashell @ Momi Ltd [2014] FJHC 803; Civil Action 32 of 2012 (5 November 2014).
2. What I have to consider now is an application for security for costs.
3. The authority of the court to grant security for costs is provided for in Order 23, Rule 1(1)(a) of the High Court Rules 1988:

"Where, on the application of a defendant to an action or other proceeding in the High Court, it appears to the Court (a) that the plaintiff is ordinarily resident out of the jurisdiction, or then, if having regard to all the circumstances of the case, the Court thinks it is just to do so, it may order the plaintiff to give such **security for the defendant's costs** of the action or proceeding as it thinks just."

4. The reason why the rules make provision for security for costs against a plaintiff is to ensure that, in the event the plaintiff loses his case against the defendant, the plaintiff will be in a position to pay the costs of the defendant.
5. The plaintiffs before me are both citizens of the United States of America where they reside and work. They visit Fiji regularly. There is no evidence before me to suggest that they have any assets in Fiji.
6. Ordinarily, once it is established that a plaintiff is not ordinarily resident in Fiji, the 'onus' shifts to him to satisfy the court that he has property within the jurisdiction which can be made subject to the process of the court (see in Babu Bhai Patel –v- Manohan Aluminium Glass Fiji Ltd Suva High Court Civil Action

No. HBC 0019/19). In other words, if he has no assets in Fiji, upon which a judgement in favour of the defendant might be executed, the plaintiff will be required to post into Court a sum of money as security for costs.

7. But even if a plaintiff is ordinarily resident out of jurisdiction, and has no assets in Fiji, he or she may still yet convince the court under that, having regard to all the circumstances of the case, it would be oppressive and therefore, not just, to order security for costs.
8. After considering all in this case, I am of the view that the plaintiffs should post security for costs into the High Court in the sum of FJD\$30,000 (Thirty Thousand Dollars Only). This is to be settled in 28 days, failing which I will consider striking out the claim.
9. Case adjourned to 11 August 2015 at 10.30am for further directions.



A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

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Anare Tuilevuka
JUDGE
Lautoka High Court.

13 July 2015