

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. 458 of 1993

BETWEEN : RESOLUTION TRUST CORPORATION  
*First Plaintiff*

AND : THE CADLE COMPANY  
*Second Plaintiff*

AND : LEINANI K. BORTLES and LARRY LYNEL BORTLES  
*First Defendants*

AND : A. MITCHEL GAY  
*Second Defendant*

AND : ALAN C. BEALL  
*Third Defendant*

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr W Clarke for the First and Second Plaintiffs.  
Ms S Shameem (Ms D Gandhi with her) for the 2<sup>nd</sup> named First Defendant.

Date of Hearing : 8 September 2016

Date of Decision : 27 October 2016

**DECISION**

1. This is the Plaintiffs' Notice of Motion for an Order of Committal against the 2<sup>nd</sup> named First Defendant (Bortles) for contempt of this Court by the breach of the injunction granted on 25 August 1993.
2. The Application is made pursuant to Order 52 rule 3, Order 11 and Order 65 rule 4 of the Rules of the High Court (RHC) and the inherent jurisdiction of the High Court. It is supported by the affidavit of Denise Harkless (Harkless).
3. The Application is opposed by the affidavit of Bortles.
4. At the hearing, the Counsel for Bortles objected to the proceedings because there was an appeal to the Court of Appeal regarding the ownership of the title concerned.
5. Counsel for the Plaintiffs asked for the proceedings to continue as it concerns the Order made in 1993 against which there is no appeal. The Court of Appeal is only concerned with the dismissal of the Counter-Claim by the Second and Third Defendants. This Court is only required to determine if Bortles has contravened the injunction.
6. Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants replied that the ownership is relevant here because the ownership has not been determined.
7. I decided that I would hear the motion after ruling against Counsel for Bortles' objection.

8. Counsel for the Plaintiffs now submitted. There were 10 (sic) titles involved. (Counsel for Bortles agreed these 10 have been transferred). Counsel submitted this was in contempt of the Court order. He said Bortles has 2 arguments viz (1) whether he owns the properties. (2) whether the order covers them. Counsel said (1) is academic because Bortles has sold them. Re: (2) he referred to Bortles' affidavit where Bortles states he is the purchaser of 10 lots and was asking for a declaration these were not subject to the injunction.
9. Counsel for Bortles then submitted. She said Bortles was saying he was the purchaser in the contract. The injunction did not injunct him as a nominee of Fiji Pacific Partners. Counsel quoted a number of decided cases in support.
10. In his reply, Counsel for the Plaintiffs said future assets were caught, to which Bortles' Counsel responded if future assets were to be caught then the injunction must say so.
11. At the conclusion of the hearing, I said I would take time for consideration. Having done so, I now deliver my decision.
12. The injunction which is the foundation of the present motion was granted by Fatiaki J on 25 August 1993. Para (i) of it reads as follows: (The 1<sup>st</sup> Defendants and each of them) " *is restrained and an Injunction is granted restraining them and each of them until further order whether by themselves their servants or agents or otherwise howsoever from transferring, dealing with, charging, mortgaging, assigning, disposing of (otherwise than to the Plaintiff or with prior written consent of the Plaintiff's Solicitors) or removing from the jurisdiction any of their or each*

*of their property or monies or assets including property held by third party entities over which the Defendants or each of them have ownership and or control within the jurisdiction of this Honourable Court including but not limited to the properties being described as Certificate of Title 6684 and Native Lease 8720;”*

13. The operative words of the above are “any of their .... property” ....
14. To my mind it is as plain as a possible that the only properties that fall within the ambit of the injunction are those properties belonging to Bortles as at or on 25 August 1993.
15. I am fortified in the view I have come to, by para (ii) of the injunction where the 1<sup>st</sup> Defendants are ordered to forthwith disclose the full value of all their assets within the jurisdiction of this Court and the whereabouts of all such assets.
16. “Forthwith” is defined by the Oxford Advanced Dictionary of Current English as “at once; without losing time.” So it is as clear as daylight the 1<sup>st</sup> Defendants are only required to disclose assets owned by them at the date of the order i.e. 25 August 1993.
17. The only such asset stated in Exhibit DH5 (which sets out particulars of the 11 properties) annexed to Harkless’s affidavit (and referred to in paras 6 and 7 thereof) that belongs to Bortles on the abovementioned date is that held under Certificate of Title No. 15146 which from the photocopy of the title was transferred to Bortles on 4 May 1993 (the 11<sup>th</sup> property). I note Bortles in para 8 of his affidavit refers to the above para 7 but does not specifically deny his ownership of this property.

18. With regard to the property held under Certificate of Title No. 6684, the letter from the Registrar of Titles dated 14 April 2015 (Exhibit D7 of Harkless' affidavit) to MVR Legal Consultancy makes it crystal clear that there were and will not be any dealings with this property until the injunction has been varied.
19. Therefore at the end of the day there is only one (1) property that comes within the ambit of the injunction.
20. But that is not the end of the matter. I turn now to the Supreme Court Practice 1995 (the White Book). At 52/1/13 it states "It is an essential prerequisite to a finding of contempt that the factual basis shall be proved beyond all reasonable doubt and that there shall have been mens rea on the part of the alleged contemnor (on the authority of *Re Supply of Ready Mixed Concrete* [1991] 3 W.L.R. 708, C.A.).
21. Here I find that the solicitors for the Plaintiffs/Applicants appear to have been completely at sea in their Statement pursuant to Order 52 rule 2(2) of the RHC. First, they refer to an Ex Parte order made on 25<sup>th</sup> August 1993 and 14<sup>th</sup> September 1994 (sic). Second, they say the grounds upon which relief is sought are that Bortles has transferred the properties stated, which actually number 11 and not 10, when I have found only the 11<sup>th</sup> came within the injunction. Thus it cannot be the case that he has committed contempt of court with regard to the 1<sup>st</sup> to the 10<sup>th</sup> properties. Third, they say Bortles is attempting to sell the property comprised in CT 6684 when it is clear that it has not and cannot be dealt with until the determination of the action.

22. When the above is the situation here I must take cognisance of what the White Book states that where the liberty of the subject is in question all provisions for his protection should be strictly complied with.
23. In fine, for the above reasons, I hereby dismiss the Motion for Committal filed on 13 October 2015 but in the particular circumstances of this case will make no order as to costs.

Delivered at Suva this 27<sup>th</sup> day of October 2016.



David Alfred  
**JUDGE**  
High Court of Fiji