

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 313 of 2005

BETWEEN : **NATALIE KATZMANN** formerly of Harvester Road, Vitogo, Lautoka but now of 741 Adelaide Street, Oxley Park NSW 2760, Australia, Assistant Manager.

Plaintiff

AND : **BARSTOCK INVESTMENTS (FIJI) LIMITED** a limited liability company having its registered office at Vuda Point, Lautoka.

Defendant

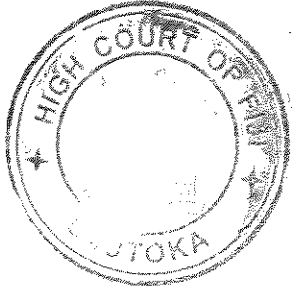
R U L I N G

1. This is the defendant's application for Security for Costs under Order 23 Rule 1(1) (a) of the High Court Rules 1988.
2. Order 23 Rule 1(1)(a) provides as follows:
 - 1.-(1) 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 jurisdiction, orThen if, after having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceeding as it thinks just
3. Lord Donaldson MR in **Corfu Navigation Co v Mobil Shipping Co Ltd** [1991] 2 Lloyd's Rep 52 at page 54 sums up the principle behind Order 23 thus:

The basic principle underlying RSC Order 23 r.1 (1) (a) is that it is prima facie unjust that a foreign plaintiff, who by virtue of his foreign residence is more or less immune to the consequences of an order for costs against him, should be allowed to proceed without making funds available within the jurisdiction against which such an order can be executed.
4. The plaintiff in this case is ordinarily resident in New South Wales in Australia. She does not have any assets in Fiji.

5. In **Babu Bhai Patel v Manohan Aluminium Glass Fiji Ltd** Suva High Court Civil Action No. HBC 0019/19, Mr. Justice Fatiaki held that once it is established that the appellant was not ordinarily resident in Fiji, the 'onus' shifted to him to satisfy the court that he has property within the jurisdiction which can be made subject to the process of the court.
6. Where a plaintiff who is ordinarily resident out of jurisdiction has no assets in Fiji, he or she may still yet convince the court against ordering security for costs if he or she were able to show that the application was being used oppressively so as to stifle a genuine claim (see **Sir Lindsay Parkinson & Co. Ltd v Triplan Ltd** [1973] 2 All ER 273 at pages 285-286).
7. Does the plaintiff have a genuine claim?
8. The plaintiff's claim stems out of an alleged incident on 18 January 2005 when the plaintiff, whilst being a paying guest at the defendant's hotel, consumed several mouthfuls of some liquid which, allegedly, had been stored in a Fiji Water bottle. The Fiji Water bottle was allegedly placed in the plaintiff's room. The statement of claim alleges that the said liquid was a detergent known as "Unique Pine", a cleaning agent used by the defendant's cleaners for the rooms.
9. The claim alleges that after ingesting the liquid, the plaintiff was immediately rushed to Lautoka Hospital where she was treated for chemical ingestion.
10. The issues in this case are all factual issues, the main one of which is – whether the liquid stored in the Fiji Water bottle was the cleaning chemical known as Unique Pine, whether or not the said bottle containing the said liquid had been left in her room by some person unknown to her, and whether or not the plaintiff did ingest the said liquid.
11. From the documents filed, it appears that the plaintiff is able to produce a medical report and hospital records to confirm that she was treated at Lautoka Hospital for chemical ingestion on the same day that she purportedly ingested the liquid.
12. I would say that she has a strong genuine claim.

13. However, I still think that she should post some security for costs in this case. I think a suitable figure for this purpose would be FJD\$6,500 (six thousand five hundred dollars) which she should post within 21 days of the date of this ruling.



A handwritten signature in black ink, appearing to be "Anare Tuilevuka", written over a horizontal dotted line.

Anare Tuilevuka

JUDGE

18 October 2017