

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No: 381 of 2019

BETWEEN : HANSONS INVESTMENTS (FIJI) PTE LIMITED
1st PLAINTIFF

AND : HANSONS (NABUA) HOLDINGS PTE LIMITED
2nd PLAINTIFF

AND : STELVIN ANIT LAL
1st DEFENDANT

AND : RANEEL LAL
2nd DEFENDANT

AND : SHALINI SHARMILA NAIDU
3rd DEFENDANT

AND : ARCHAL PRASAD
4th DEFENDANT

AND : ARISHMA KIRAN
5th DEFENDANT

AND : KARISHMA MAHARAJ
6th DEFENDANT

AND : SWASTIKA NIKATNI NAND
7th DEFENDANT

AND : SOFIA FAMEEZA GAZNABI
8th DEFENDANT

AND : SNEH SHERIN MALA
9th DEFENDANT

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr S. Singh for the Plaintiffs
: Mr P. Gosai for the 1st, 3rd, 4th, 5th, 6th & 9th Defendants
: Mr A Chand for the 8th Defendant

DATE OF HEARING : 13.12.2019

DATE OF RULING : 12.02.2020

RULING

INTERLOCUTORY INJUNCTION: Stop departure order – Restraint of disposal of assets – Burden of proof – Plaintiffs must establish a *prima facie* case – Affidavits must disclose the necessary evidence – Court will not hold a mini trial – Orders not to be lightly made – Order 29 of the High Court Rules 1988

Cases referred to:

1. Evans v Wong [2013] FJHC; Civil Action 05.2012 (5 March 2013)
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1. The plaintiffs filed a writ of summons on 14 November 2019. In the statement of claim, the plaintiffs pleaded that the 1st and 6th defendants were employed as managers while the other defendants were cashiers, and that between 11 March 2017 to 31 August 2019 the defendants stole and appropriated the sums of money which have been set out in the statement of claim. The plaintiffs claimed that, in aggregate, the defendants had received a sum of \$306,600.19, which was detected following an audit from August to October 2019, and that the plaintiffs have complained to the police regarding the loss of money. The plaintiffs sought judgment against the defendants in the sums set out under prayer A of the statement of claim.
2. An *ex-parte* summons was filed by the plaintiffs on 14 November 2019 seeking in the main the following orders:
 - a. *That a stop departure order be made against the defendants restraining them from leaving the jurisdiction of this honourable Court*
 - b. *That the defendants be restrained from removing from the jurisdiction of this honourable Court or otherwise dissipating, charging or disposing of or dealing with any of their assets within the jurisdiction of this honourable Court.*
 - c. *That within 7 days from the service of these orders, the defendants provide to the plaintiffs and/ or their solicitors with a list of all their assets including recent bank account statements, records of the Land Transport Authority confirming*

motor vehicles owned by the defendants and a list of all real estate owned by the defendants.

- d. That within 7 days of the service of these orders, all banks in Suva, being the Bred Bank, ANZ Banking Group Ltd, the Bank of Baroda, Bank of South Pacific and Westpac Banking Corporation provide to the plaintiffs and/ or their solicitors up to date details or any bank accounts held in the name of the defendants and their balances.*
 - e. That the Land Transport Authority provide to the plaintiffs and/ or their lawyers details of all motor vehicles and/ or any public service permits owned by the defendants.*
 - f. That the time of service of these documents be abridged*
3. The affidavit in support of the plaintiffs' summons, given by a director of the companies, reiterated the contents in the statement of claim, and averred that orders were sought seeking to prevent the defendants from leaving the country, requiring disclosure of assets and for freezing of assets; that it is highly likely that the defendants may dispose-off their assets to friends or relatives once they become aware of the action against them; and that in the event such assets were disposed, the defendants would be able to avoid the plaintiffs' claim in its entirety. The plaintiffs gave an undertaking as to damages.
4. When the matter was supported on 20 November 2019, counsel for the plaintiffs submitted that there is an imminent risk of the defendants leaving the country and also in transferring the assets and at that stage sought reliefs (a) and (b) of the *ex parte* summons. Counsel for the plaintiffs did not press the Court for reliefs (c), (d) and (e). Thereupon, Court granted reliefs (a) and (b) of the plaintiffs' *ex parte* summons to be in force until 28 November 2019, and directed the defendants to be noticed and the time for service of documents be abridged. That order was sealed on 22 November 2019.

5. The matter was thereafter mentioned on 27 November 2019, on which day the plaintiffs moved to withdraw the action against the 7th defendant, following full settlement of the sum claimed from that defendant. Orders were made on that day for reliefs (a) and (b) of the plaintiffs' summons to remain in force until 13 December 2019, subject to the variation that relief (b) would be restricted to the sums mentioned in the writ of summons. The defendants were directed to file affidavits in response on or before 10 December 2019 and the plaintiffs were to reply by 12 December 2019. The matter was to be mentioned on 13 December 2019, but a date for hearing was not fixed as at that stage. This order was sealed on 29 November 2019.

6. A further *ex-parte* summons was filed on 5 December 2019, seeking an order to give notice of the writ of summons and the summons for the injunction and ancillary orders by publication in the Fiji Sun newspaper, and for such a publication to be good and sufficient service upon the 2nd defendant. This was supported on 9 December 2019, and order was granted in terms of the *ex-parte* summons. No representation was made on behalf of the 2nd defendant. Court directed the parties to make submissions with respect to the reliefs granted on the summons filed by the plaintiffs on 14 November 2019.

7. When the summons came up for hearing on 13 December 2019, counsel for the 1st, 3rd, 4th, 5th, 6th & 9th defendants, Mr P. Gosai, submitted to Court that no objections were filed on behalf of his clients and that he did not object to the orders already granted by Court. This is notwithstanding the very brief statement of defence filed on behalf of these defendants on 4 December 2019, where the claims of the plaintiffs have been denied, and such claims have been described as frivolous, vexatious and an abuse of the process of court. At the conclusion of submissions by counsel for the plaintiffs and the counsel for the 8th defendant, the Court reserved ruling. Counsel for the 1st, 3rd, 4th, 5th, 6th & 9th defendants did not make submissions. Reliefs (a) and (b) in the plaintiffs' summons dated 14 November 2019, were extended against all defendants except for the 7th defendant until further notice, subject to the amounts mentioned in the writ of summons. This was sealed on 13 December 2019.

8. At the hearing, counsel for the 8th defendant submitted that serious prejudice would be caused to his client if the stop departure order and the restraining order are extended against the 8th defendant. In her affidavit in response, the 8th defendant had denied any wrong doing and averred that she was on the permanent staff at the Makoi Total Bowser and on a temporary basis to relieve the cashiers at the Nabua Bowser belonging to the plaintiffs; that not all purchases were through cash and that she was directed by her manager to share her pin with the other cashiers; and that sales were balanced on a daily basis, and as a result, an irregularity would have been detected. She denied the allegations against her, and claimed that the plaintiffs had failed to disclose the necessary financial statements and bank statements in support of their claim and that the plaintiffs' undertaking as to damages was insufficient as she has a counterclaim against the plaintiffs.

9. Counsel for the 8th defendant made the point that there must be sufficient evidence for the Court to impose the requested measures. That I agree with. The burden of proof is upon the plaintiffs to establish a *prima facie* case and satisfy the Court that they are entitled to the reliefs sought in the summons. For this, there must be sufficient evidence disclosed through the affidavits that the plaintiffs are entitled to the reliefs sought in the summons and that this is a fit case to exercise the Court's discretionary jurisdiction. Prospects of success at the trial may not in itself suffice; and, in this case, the 8th defendant is vigorously denying liability, and threatening to set up a counterclaim. In such a contest, findings from the evidence will ultimately have to be made at the conclusion of the trial. The merits of the matter cannot be fully inquired into at this stage. What needs to be established is in relation to the orders sought by the Plaintiffs' summons. Such orders are not to be lightly given. Their effect will be to interfere with the legal rights of a person. To obtain a stop departure order, there must be an imminent risk of a person taking flight. There must be some evidence in proof of this. Such a fact cannot simply be imagined, without evidence, however convenient that may be; each case will, of course, depend on its facts.

10. Similarly, restraining a person from dealing with her assets is an equally serious matter. Both orders have the potential to impede constitutional freedoms; the

freedom of movement¹ and the right not to be deprived of property except in accordance with the law. There must be some indication that such possibility is quite likely, so that the Court may exercise its discretion and make the orders sought by Court. Such evidence could even relate to past conduct of this defendant, evidence of which would justify the Court taking appropriate measures to thwart the disposal of assets so that the orders of Court are properly enforced upon conclusion of the trial. In this case, there is a vague assertion that the defendants could dispose their assets to their relatives and friends when they become aware of the case. Orders cannot be made on such conjecture, especially when the 8th defendant is hotly disputing the plaintiffs' claims.

11. The Court's ruling at the interlocutory stage is based on affidavits. The plaintiffs have furnished a large amount of documents, which are relied upon to establish the plaintiffs' case; but the Court cannot venture into a mini trial at this stage. The evidence put forth through such affidavits must be convincing enough for the Court to exercise its discretion and make the orders sought. I am not convinced that the plaintiffs have established a *prima facie* case in this instance. Whilst I am mindful of the concern that the plaintiffs have in enforcing a favourable judgment, if such is the result at the conclusion of the trial, the Court must also consider at this stage the respective prejudices that could accrue; to the plaintiffs, by not granting the orders sought in the summons; to the 8th defendant, by making the orders.

12. Counsel for the plaintiffs submitted that unless the Court makes the orders sought, the plaintiffs would be frustrated from recovering the misappropriated monies. If that line of argument is to be accepted, the courts would be inundated with similar applications in every case at the time a plaintiff sues to recover money from a defendant. That would not be an acceptable use of the Court's extraordinary jurisdiction, unless there are tangible grounds that justify the Court's intervention.

¹ Article 21 of the Constitution of the Republic of Fiji

13. Counsel for the plaintiffs referred to the case of Evans v Wong², in support of his argument. In that case, the High Court initially issued an order to the immigration authorities stopping the respondents from leaving Fiji. An affidavit of one of the applicants averred that a respondent had resigned from employment and planned to migrate after discreetly selling their property. The orders were issued *ex-parte* on the basis of those averments. The respondents filed affidavits that there was no material to substantiate the claim that they intended to migrate. After hearing, the High Court discharged the prohibition order made against the 1st respondent. It would seem, therefore, that the reasoning in *Evans v Wong* would not be of assistance to the plaintiffs in this case.
14. The plaintiffs have not established that irremediable harm would be caused to the plaintiffs if the orders are not made against the 8th defendant, and all things considered, the Court is of the opinion that greater prejudice would be caused to the 8th defendant by making the orders. In the context of this case, I am of the view that it would not be a proper exercise of the Court's discretion to grant the orders sought by the plaintiffs' summons against the 8th defendant. However, orders relating to reliefs (a) and (b) of the plaintiffs' summons dated 14 November 2019 will continue to operate against the 1st, 2nd, 3rd, 4th, 5th, 6th & 9th defendants until further orders are made by this Court.

By an oversight, the withdrawal of the action against the 7th Defendant on 27 November 2019 is not recorded in the sealed orders. I will clarify that in the orders below. The Parties were issued notice that the order would be delivered on 27 December 2019. However, presumably due to the cyclone warning on that day, the lawyers for both parties did not turn up. As a result, I have availed myself of the opportunity to take a further look at the summons before me.

Orders

- A. Reliefs (a) and (b) in the plaintiffs' summons dated 14 November 2019 are granted against the 1st, 2nd, 3rd, 4th, 5th, 6th & 9th defendants, until further orders are made by Court in connection with these reliefs. The restraint in respect of relief

² [2013] FJHC; Civil Action 05.2012 (5 March 2013)

(b) shall not exceed the respective sums mentioned in the writ of summons in relation to each of the defendants to whom the orders apply.

- B. Reliefs sought in the plaintiffs' summons dated 14 November 2019 against the 8th defendant are declined.
- C. The plaintiffs' action against the 7th defendant is dismissed, upon withdrawal.
- D. The registry will notify the contents of this order to the immigration authorities and specify the removal of the names of the 7th and 8th defendants.
- E. The plaintiffs are directed to pay the 8th defendant a sum of \$400.00 as costs summarily assessed.

Delivered at Suva this 12th day of February, 2020



Justice M. Javed Mansoor
Judge of the High Court