

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 175 OF 2020

BETWEEN : **FIROZ AIZAAZ ALI** of Yalalevu, Ba, Company Director.

PLAINTIFF

AND : **CHOUDHRY IKRAM MOHAMMED** of Ravouvou Street, Lautoka, Fiji, Company Director.

FIRST DEFENDANT

AND : **DHURUP CHAND** of 36 Evan Street, Lautoka, Company Director.

SECOND DEFENDANT

AND : **YURI GLOBAL ENGINEERING PTE LTD** a limited company having its registered office at 51 Ravouvou Street, Lautoka, Fiji.

THIRD DEFENDANT

Appearances : Mr R. Charan for the plaintiff
Mr Z. Mohammed for the defendants

Date of Hearing: 21 August 2020

Date of Ruling : 27 August 2020

R U L I N G

[*on interim injunction*]

[01] The Court granted an *ex parte* injunction on 6 August 2020, to be valid till today, 21 August 2020, when the application for interim injunction will be heard *inter partes* before the court.

[02] The plaintiff has filed an *ex parte* summons supported by an affidavit ("*the application*") and seeks the following interim orders:

- a. *An interim injunction restraining the defendants by themselves and/or through their servants and/or agents and/or howsoever selling, mortgaging, charging or dealing in any*

manner whatsoever with the assets of the third defendant company, without the consent of the plaintiff pending the hearing and determination of the substantive proceedings;

- b. An interim injunction restraining the second defendant from acting as a purported director of the third defendant company;*
- c. That the plaintiff shall be permitted to open a bank account with any of the recognised commercial banks in Fiji;*
- d. That the plaintiff shall be permitted to execute all payment vouchers notes and memorandums authorizing just payments for and on behalf of the third defendant.*
- e. That the plaintiff be permitted to make and execute cheques and make payments as required for the operation of the third defendant company.*
- f. The plaintiff shall be at liberty to provide and instruct the commercial banks, suppliers, contractors, clients and all statutory entities in all matters in relation to the third defendant;*
- g. That the plaintiff be allowed uninterrupted access to all company premises;*
- h. That there be an independent audit of the company;*
- i. An injunction restraining the defendants from making further statements or publishing defamatory statement;*

[03] The application is made under Order 29 of the High Court Rules 1988, as amended (“HCR”), which provides:

“Application for injunction (O 29, R 1)

1 (1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party’s writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency and the delay caused by proceeding in the ordinary way would entail irreparable or serious

mischief such application may be made ex parte on affidavit but except as aforesaid such application must be made by notice of motion or summons.

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit."

[04] The orders granted on *ex parte* basis were orders "a", "b" and "i" above.

[05] The defendants have filed an affidavit in opposition and strenuously opposing the extension of that injunction or granting of any interim injunction. The ground for such objection is that:

1. The first defendant never at any span of time offered the plaintiff 50% shares in the business or any percentage at all.
2. The first defendant did not ask the plaintiff for any loan.
3. There is no company seal to confirm that that purported loan was for the third defendant company.
4. The purported acknowledgement of debt ("AoD") was not even witnessed by any independent person.
5. Two (2) directors should have signed and/or a Director and a Company Secretary should have signed the purported AoD.
6. All banks required the first defendant's work permit to enable the third defendant to open the account as the first defendant was a 100% shareholder of the third defendant company.

[06] The plaintiff has filed an affidavit in reply to the affidavit in response.

[07] The matter was orally argued today.

[08] The granting of the interim injunction has been challenged on 3 grounds.

1. The plaintiff has failed to show that he is/was a 50% shareholder of the third defendant company.
2. The AoD has been signed by the plaintiff purportedly or acting as a director of the company, second defendant.
3. There is no sufficient undertaking as to damages.

[09] It appears that the plaintiff was one of the directors of the third defendant company and he has been removed as such. Thereafter, he has filed the action against the company. His claim hinges on the purported AoD. It has been signed by him (plaintiff) alone, and claims that the first defendant promised a 50% shareholding in the third defendant company. In his claim he seeks damages against the defendants.

[10] The injunction is a discretionary remedy. I am not satisfied that I should extend or grant an interim injunction in this case because the plaintiff has failed to show any document demonstrating that he was a 50% shareholder in the third defendant company. Further, the purported AoD is questionable as it has been signed by the plaintiff only against section 53 (1) of the Companies Act. That section says a company may execute a document if the document is signed by: (a) 2 Directors of the Company; (b) a Director and a secretary of the Company; or (c) for a Private Company that has a sole Director who is also the sole secretary of the Company, that Director.

[11] The plaintiff fails to demonstrate a prima facie case for an interim injunction. I would, therefore, refuse to extend or grant the injunction orders sought. However, I would grant an interim injunction as in prayer (i) of the application that an injunction restraining the defendants from making further statements or publishing defamatory statements against the plaintiff forthwith, until conclusion of the substantive matter. Costs of this application shall be in the cause.

[12] The substantive matter is returned back to the registry to resume its normal course.

Result

1. The interim orders 1 and 2 granted on 6 August 2020 be dissolved forthwith.
2. The defendants shall be restrained from making further statements or publishing defamatory statements against the plaintiff forthwith, until final determination of the substantive matter.
3. The matter to take normal course.
4. Costs shall be in the cause.

M.H. Mohamed Ajmeer
27/8/20

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M.H. Mohamed Ajmeer
JUDGE



At Lautoka
27 August 2020

Solicitors:

Ravneet Charan Lawyers for the plaintiff

Zoyab Shafi Mohammed Legal, Barristers & Solicitors for the defendants