

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION**

Civil Action # **HBC 21 of 2021**

**BETWEEN:**            **DAUMAKA PTE LIMITED** a limited liability company having its  
registered office at 41 Amy Street, Toorak, Suva

**PLAINTIFF**

**AND:**                    **DARSHAN SINGH** of 39 Spring Street, Suva

**DEFENDANT**

**Representation:**

**Plaintiff:** Mr. V. Maharaj (Vijay Maharaj Lawyers).

**Defendant:** Mr. V. Singh (Parshotam Lawyers).

**Proposed 2<sup>nd</sup> Defendant:** Mr. K. Singh (K.S Law).

**Ruling**

**A.    Introduction**

- [1]    The Plaintiff on 25<sup>th</sup> July 2023 filed summons (with an affidavit of Gao Zhong Lin) seeking to join Indar Jeet Singh as a party to the proceedings as 2<sup>nd</sup> Defendant, injunction against Indar Jeet Singh from dealing with Certificate of Title Nos. 5964 and 5965 until the determination of this action and that leave be granted to the Plaintiff to refer and use in evidence the affidavit of Gao Zhong Lin sworn on 2<sup>nd</sup> January 2021. An affidavit in response of the Defendant was filed. An affidavit in opposition was also filed by Indar Jeet Singh.
- [2]    On the basis of an ex-parte motion I have granted interim injunction restraining the Defendant and proposed 2<sup>nd</sup> Defendant from any dealing with CT 5964 and 5965 until hearing on the summons and/or further orders of the court.

**B.    Background and History**

- [3]    The Plaintiff and the Defendant are neighbors. On 27<sup>th</sup> October 2019, fire had broken out from the Defendant's property. It destroyed the Defendant's wooden structure. The fire also spread to the Plaintiff's property and caused substantial damages.
- [4]    On 2<sup>nd</sup> February 2021 the Plaintiff commenced action (writ of summons) against the Defendant seeking damages and a mareva injunction restraining the Defendant from dealing with the property. The Plaintiff also filed summons (with an affidavit of Gao Zhong Lin) seeking Mareva injunction and order that the Plaintiff's building

contractor, servants and agents be permitted enter the property of the Defendant to erect scaffolding to complete rectification works on the wall facing the Defendant's property between the hours of 8am to 6pm. An affidavit in response of the Defendant was filed on 1<sup>st</sup> March 2021. A Statement of Defence was filed on 9<sup>th</sup> March 2021. A reply to the Statement of Defence was filed on 12<sup>th</sup> April 2021.

- [5] A terms of settlement was entered into between the parties and filed in court on 16<sup>th</sup> March 2021 so that the Plaintiff's building contractor, servants and agents may access the Defendant's property for a period of 5 weeks. PTC Minutes were filed in Court on 11<sup>th</sup> May 2023. Summons to enter the action for trial was filed on 19<sup>th</sup> May 2023.

C. **Submissions**

- [6] The submission **for the Plaintiff** can be briefly summarized as follows:

At the commencement of the action the properties from which the fire started and damaged the Plaintiff's property were registered in the name of the Defendant. At the PTC stage, The Plaintiff came to know of the transfer of the property from the Defendant to Indar Jeet Singh, his son. The Defendant had deposed in an affidavit (sworn on 1/3/2021) that he had no intention of dealing with the properties. According to the Plaintiff the "*transfer of the two properties is a sham transfer done in collusion between the father and son to defeat the Plaintiff's potential Claim in the event Judgment is given in Plaintiff's favour. The joinder will enable the Plaintiff to investigate this transfer further with proper pleading after joinder*". The Plaintiff further contends that if joinder is refused and the plaintiff is successful, they would need to file another action against the party to be joined.

The injunction being sought by the Plaintiff is to preserve the status quo and to preserve the status quo pending the decision of the Court. The Plaintiffs have also sought leave to refer and use the affidavit of Gao Zhong Lin. The Plaintiff also seeks an Injunction, to restraint the judgment debtor or potential judgment debtor from committing the abuse of dissipating or hiding assets. A number of case authorities were referred to by Mr. Maharaj.

- [7] The submission **for the Defendant** were:

That the cause of action or the matter dealt with property. Reliance is now placed on an earlier affidavit from 2021. The application for access and injunctive orders were discontinued. On 16<sup>th</sup> March 2021 the matter was struck out by Justice Amratunga. Plaintiff cannot rely on any materials filed in struck out application. Can only stand on current application. Is a second such application before the court. The Plaintiff is duplicating injunction application. The Plaintiff is seeking damages and damages is an adequate remedy. No undertakings as to damages. 3<sup>rd</sup> party now owns properties.

Referred to Page 527 of the White Book (dispute as to ownership). There is no link. Cause of action that the Plaintiff has brought. Order 15 Rule 4 – joinder of parties (White Book) – allegation against the defendant. Not the party intending to be joined. None of the Plaintiff's authorities apply to our situation. Application is inadequate.

- [8] For the **Proposed 2<sup>nd</sup> Defendant** it was submitted that:

In reference to the summons for the Plaintiff it was submitted on Order 15 Rule 6 not on Order 15 Rule 4. Application is defective. Order 41 Rule 4 provides for defective affidavit to be used with the leave of the Court. The intended intervener was not a

party when summons filed. Allowing it to be used without intervener being served is breach of natural justice. The claim reflects negligence not fraud. No application to draw nexus. No proposed amended statement of claim against 2<sup>nd</sup> Defendant. Nothing before the court. No cause of action against the intervener. The writ claims Mareva injunction, the summons does not seek Mareva injunction. The property is not subject to injunction. Is purely for damages. Undertaking given specifically to Defendant not to proposed 2<sup>nd</sup> Defendant. Need to give undertaking as to damages.

[9] In reply for the Plaintiff it was submitted that:

The in the terms of settlement there was no relief for injunction. No determination on merits. It dealt with access. Injunction can be at a later stage. Circumstances may change. Can come for relief. Plaintiff is entitled to come to Court for injunction. "Potential judgment debtor". Wide powers of court to use affidavit in these proceedings. Order 41 is wide ranging. Court has power and discretion. At the stage the Plaintiff commenced action there was no cause of action against the proposed 2<sup>nd</sup> defendant. A sham transfer in collusion will be gist of our claim. Cannot allege until leave given to join and amend.

**D. Analysis**

- [10] The Plaintiffs application is made pursuant to Order 15 Rule 4 (1) – Joinder of parties, Order 29 Rule 1 – Application for injunction and Order 41 – Affidavits, of the High Court Rules 1988.
- [11] I would firstly deal with the issue of the Plaintiff seeking leave to rely on affidavit of the Plaintiff filed on 2<sup>nd</sup> February 2021. The said affidavit was filed with summons seeking an interim injunction against the defendant from dealing with the subject property. The Plaintiff also sought that his building contractors, agents and servants be permitted to enter the Defendants properties during certain hours to erect scaffolding to complete rectification works. The Defendant for his part had filed an affidavit in response on 1<sup>st</sup> March 2021. These are all part of the Court records. On 16<sup>th</sup> March 2021 terms of settlement were filed in court and subject to clause 9 of the terms of settlement the Plaintiff wholly discontinued the application. The summons was struck out by the Judge. The summons was one application that the Judge had dealt with. The Writ action is on foot.
- [12] The summons that was struck out has been dealt with, as the parties had reached settlement. Both parties had filed sworn affidavit as evidence in the application. It was part of the proceedings. The application that was filed was a relevant application in the proceedings between the parties. I am of the view that documents that are relevant to the Court proceedings should be available for use in the proceedings. The affidavits filed in this action are relevant affidavits. I therefore grant leave to the Plaintiff to refer to and use the affidavit of the Plaintiff filed on 2<sup>nd</sup> February 2021.
- [13] The decision to allow or refuse a joinder application is discretionary: **Thomas v Moore, [1918] 1 KB 555 (Per Lord Sterndale MR)**. The Plaintiff in this action is seeking to join Indar Jeet Singh as a second defendant. When the proceedings commenced the property from which the fire broke out was in the name of the Defendant. According to the Plaintiff they became aware at the PTC stage that the property was transferred by the Defendant to Indar Jeet Singh, his son. The argument for the Plaintiff is that if they are successful in this action against the Defendant and

the intended 2<sup>nd</sup> Defendant is not joined. They would need to file another action against the intended 2<sup>nd</sup> Defendant. There could then be issues of time limitations.

[14] The Plaintiff in this action is seeking damages. Damages is equated in monetary terms. The property is valued in monetary terms. The Defendant has transferred the property to his son. The transfer is by way of natural love and affection. The Plaintiff contends that the Defendant by the transfer will be avoiding the Plaintiff in enforcing any award of damages against the Defendant's assets if they are successful. This assertion has not been refuted by the Defendant. The Defendant for his part in March 2021 had sworn an affidavit that if wanted to deal with the property he would have done so after the fire in 2019, not 2 years later in 2021. However, the Defendant went ahead and dealt with the property. The dealing took place while the proceedings are on foot. The Defendant and the proposed 2<sup>nd</sup> Defendant, give different reasons for the transfer of the properties. They do not reconcile. The Defendant in his affidavit states his intention was to gift the property to his son during his lifetime. The proposed 2<sup>nd</sup> Defendant on the other hand states that the "sole purpose of transferring the property" to him by the Defendant (his father) was that his father cannot get a loan at his age and they need to build their house as primary residence.

[15] It is well established that only parties to the proceedings are bound by a Court's decision. I find it appropriate that Indar Jeet Singh be added as a 2<sup>nd</sup> Defendant. On the issue of an injunction. The Defendant has already dealt with the property despite stating that the "Plaintiff has no evidence that I intend to deal with my property". The reasons given by the Defendant and the proposed 2<sup>nd</sup> Defendant differ. I am not persuaded by their affidavits for the reasons given for the transfer of the property. The Plaintiff seeking an injunction from the outset was the prudent approach. The Plaintiff's suspicions were proven with the transfer by the Plaintiff to his son (proposed 2<sup>nd</sup> Defendant). Having considered the law and the factors to be considered in relation to injunction, I am of the view that the Interim Injunction granted in relation to the property continue and be in place until completion of this matter and/or further orders of the Court.

[16] The Defendant is to pay the Plaintiff \$2500.00 as costs within 21 days. The costs have been summarily assessed.

E. **Court Orders**

- (a) The Plaintiff is granted leave to refer and use in evidence the affidavit of Gao Zhong Lin sworn on 2<sup>nd</sup> February 2021 in the within proceedings so far as may be relevant to the summons.
- (b) Leave is granted to the Plaintiff to join **INDAR JEET SINGH** of Lot 40 Alipate Nairoisui Road, Nasinu, Lab Technician as a party to the proceedings as **SECOND DEFENDANT** with consequential directions in relation to the pleadings.
- (c) Injunction restraining **INDAR JEET SINGH** from selling, assigning, transferring or in any way dealing whatsoever with the properties being Certificate of Title No. 5964 and Certificate of Title No. 5965 until the final determination of this Action.

*(d) Defendant to pay Plaintiff \$2500.00 costs within 21 days*

Chaitanya S.C.A. Lakshman

Puisne Judge

29<sup>th</sup> August 2024

