

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

**Civil Action No. HBC 50 of 2025**

**BETWEEN:** **TIMOTHY TERENCE MANNING** of 11/19 Como Street, Takapuna,  
Auckland, New Zealand, Director

**PLAINTIFF**

**AND:** **YADUA ISLAND (FIJI) PTE LIMITED** a duly incorporated company  
having its registered office at Parshotam Lawyers, Level 2 Mid City, Cnr  
of Waimanu Road and Cumming Street, Suva.

**DEFENDANT**

**Coram:** **Banuve, J**

**Date of Hearing:** **19<sup>th</sup> March 2025**  
**Date of Ruling:** **28<sup>th</sup> March 2025**

**Counsels for the Plaintiff:** **Kumar Legal**  
**Counsels for the Defendant:** **Parshotam Lawyers**

**RULING**

**A. INTRODUCTION**

1. A Summons [for an Injunction] was filed by the Plaintiff on 13 February 2025 in which the following orders were sought;
  - (a) Time for service of this summons is abridged.
  - (b) The summons be heard instanter.

- (c) An injunction be granted restraining the Defendant jointly and/or severally whether by themselves or by their servants and/or agents or by whosoever from dealing with Native Lease No. 28062, being Yadua Island on Lots 1 SO5580 in the Tikina of Malolo in the Province of Nadroga/Navosa containing an area of 10.9791 HA.
  - (d) The costs of this application shall be paid by the Defendant.
  - (e) Any further or other relief in aid of the prayers sought therein as this Honorable Court deems just and equitable.
- 2. The application is made pursuant to O.29, r.1 and O.32 of the *High Court Rules* 1988 and, under the inherent jurisdiction of this Court, and is supported by an affidavit filed by a Taufua Ema, attaching the Affidavit in Support of Timothy Manning deposed on 12 February 2025.
  - 3. The application is opposed by the Defendant and an Affidavit in Response affirming its opposition was deposed by Mitchell Tevita Deve and filed on 13 March 2025.
  - 4. An Affidavit was filed by Taufua Ema attaching the Affidavit in Reply of Timothy Manning deposed on 18 March 2025.

**B. THE LAW**

- 5. Order 29, Rule 1 of the *High Court Rules* 1988 states;
  - (i) *An application for grant of 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.*
  - (ii) *Where the applicant is the Plaintiff and the cause 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 by except as aforesaid such application must be made by Notice of Motion or Summons.*

(iii) *The Plaintiff may not make such an application before the issue of 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 writ of summons and such other terms, if any, as the Court thinks fit.*

6. Order 32 of the *High Court Rules 1988*, states;

*1. Except as provided by Order 25, rule 7, every application is chambers not made ex parte must be made by summons.*

7. As the injunction sought is prohibitory in nature the governing principles laid down in *American Cyanamid Co v Ethicon* [1975] 1 All ER 504 would apply to it, as follows;

**(a) Whether there is a serious question to be tried?**

**(b) Whether damages would be an adequate remedy?**

**(c) Whether balance of convenience favor granting or refusing interlocutory injunction?**

8. In that case the object of the interlocutory injunction is stated as<sup>1</sup>;

*“The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his rights for which he could not be adequately compensated in damages recoverable in the action, if the uncertainty were resolved in his favor, at the trial; but the plaintiff’s need for such protection must be weighed against the corresponding need for the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated, under the plaintiff’s undertaking in damages if the uncertainty were resolved in the defendant’s favor at the trial. The*

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<sup>1</sup> Lord Diplock, p509.

*court must weigh one need against another and determine where the balance of convenience lies”.*

9. In Hubbard & Another v Vosper & Another [1972] EWCA Civ 9; (1972) 2 WLR 389, Lord Denning provided some guide on the principles for the grant of injunction;

*“In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the Claim, but also to the strength of the defence, and then, decide what is best to be done. Sometimes it is best to grant an injunction, so as to maintain the status quo until the trial. At other times, it is best not to impose a restraint upon the defendant, but leave him free to go ahead. For instance, in Fraser v Fraser (1969) 1 QB 349, although the Plaintiff owned the copyright we did not grant an injunction, because the Defendant might have a defence of fair dealing. The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules.”*

### C. ANALYSIS

10. Both parties have provided written submissions which the Court has found very useful in its deliberation.
11. An important guide to the ‘*sequential*’ mode of applying the principles governing interim or interlocutory injunctions, was provided by the Court of Appeal in Sea Pilots (Fiji) Ltd v Peckham [2025] FJCA 12<sup>2</sup>;

*“ [10] If there is no serious question to be tried, the court should not proceed to consider irreparable harm or balance of convenience. In Eng Mee Yong v Letchumanan [1980] AC 331, the Privy Council confirmed that a case with no reasonable cause of action cannot justify injunctive relief, and in Ladbroke (Football) Ltd v William Hill (Football) Ltd [1964] 1 WLR 283,*

*it*

*was held that if a claim is groundless, the court need not go further. The*

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<sup>2</sup> Prematilaka JA, paragraphs [10] and [11]

test for an interim injunction is sequential, if a party fails to establish a serious question to be tried, the court must dismiss the application without considering the second and third steps. Courts will only evaluate irreparable harm and balance of convenience after the first criterion is met.

*This approach ensures that the injunction process remains fair, efficient and consistent with established legal principles.*

*11] However, even if (1) – serious question to be tried – is answered in the affirmative, the judge must still consider (2)-irreparable harm and (3)-balance of convenience before granting an injunction.” (underlining for emphasis)*

12. The Plaintiff pleads in the Statement of Claim that;

*“10. Pursuant to the Terms of Settlement entered between Consultant Management Services Limited and Timothy Terence Manning executed on 9 March 2022 which stated as follows:*

*3.1 That, in full and final settlement of all and any claims related directly or indirectly, to all issues that arise in the proceedings, Tim will immediately procure the transfer of TFT Investment Ltd’s shareholding in Sigatoka Investments No. 22 Limited (Sigatoka) to CMS and will take all necessary steps to resign as a director, and take all other steps to transfer all records and property owned by Sigatoka to CMS as set out in items 1 and 9 of Schedule 1 to this Deed.*

*3.4 That within 10 working days from the date of execution of this Deed, Tim will deliver items 1 and 9 listed in Schedule 1 to CMS’s solicitors Dyer Whitechurch and CMS will pay the nominated account of Tim, the sum of \$100,000 (inclusive of GST if any).*

### **Particulars**

11. As per the Deed of Settlement, the Plaintiff was required to carry out the Transfer,  
yet CMSL took it upon themselves to transfer the shares.

12. *The transfer was undertaken without payment of the sum of NZD\$100,000 and in breach of the Deed of Settlement.*
  13. *The sum owed by CMSL, in the sum of NZD\$100,000, as the parent company of Bishop Holdings Limited, which owns the lease in Fiji.*
  14. *The transfer because of non-payment is in breach of the Deed of Settlement”.*
13. Plainly, the pleadings indicate that suit has been initiated because of the allegation by the Plaintiff that the Defendant breached a Deed of Settlement dated 9 March 2022, entered into by the Plaintiff and the Defendant (‘the parties’) in proceedings issued in the High Court of New Zealand, Auckland Registry-CIV 2020-404-1603 (the proceedings).
  14. Pertinent features of the Deed are;

*“1.1-1.2 The parties to the High Court of New Zealand proceedings are **Consultant Management Services Ltd**, an entity registered in New Zealand and **Timothy Terence Manning**, Company Director and New Zealand national.*

*2.3.1 That the parties resolved all matters between them at a mediation in Auckland on Wednesday, 9 March 2022*

*3.1.1 That in full and final settlement of all and any claim directly or indirectly to all issues that arise in the proceedings, Tim will immediately procure the transfer of TFT Investment Limited’s shareholding in Sigatoka Investments No.22 Limited (Sigatoka) to CMS and will take all necessary steps to resign as director, and take all other steps to transfer all records and property owned by Sigatoka to CMS as set out in items 1 and 9 of Schedule 1 to the Deed.*

*3.3 That, after the transfer referred to at paragraph 3.1, that no party to this Deed nor Sigatoka will have any claim against any other party **save as set out in this deed.**(italics for emphasis)*

3.10 *That this Deed is covered by New Zealand law*".

15. It is plain from the terms of the Deed of Settlement, outlined, that neither Yadua Island (Fiji) Ltd, the Defendant, whose single asset is **Native Lease No 228062**,<sup>3</sup> over land described as **Yadua Island on Lot 1 SO 5580, Tikina of Malolo, Province of Nadroga/Navosa, Area of 10.0791 HA**, nor Bishop Holdings (Fiji), Ltd, which owns all the shares in Yadua Island (Fiji) Ltd, are parties to the Deed, yet, it is Yadua Island (Fiji) Ltd which is the subject of the injunction sought by the Plaintiff in its Summons of 13 February 2025.
16. In written submissions, the Plaintiff clarifies why suit is being initiated against Yadua Island (Fiji) Ltd, even though it is not a party to the Deed of Settlement (and only CMSL and Timothy Terence Manning, who are parties);

*"A simple answer to that is because CMSL is the controlling entity of the Defendant. From the Deed, all administrative and legal matters relating to Yadua Island is being undertaken by CMSL-evidence of this is the Deed itself. CMSL as per the Deed the powers to make decisions, relating to ownership, etc, of Yadua Island Pte Ltd. The Plaintiff has pleaded that transfer of shares was procured by CMSL "*

#### **IS A SERIOUS CASE ESTABLISHED?**

17. The primary grievance of the Plaintiff stems from what he alleges are breaches of the Terms of Settlement he signed with CMSL in full and final settlement, of all or any claims related directly to all issues that arose in proceedings issued in the High Court of New Zealand Auckland Registry under CIV 2020-404-1693.

17.1 The Plaintiff, however, in initiating Civil Action No 50 of 2025 in this Court, overlooks clause 3.3 of the Deed of Settlement, which specifies that, *"after the transfer referred to at paragraph 3.1, that no party to this Deed will have any claim against any other party say as is set out in this Deed"* and clause 3.10 that *"[the] Deed is covered by New Zealand law."*

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<sup>3</sup> Annexure A to the Affidavit in Response filed by the Defendant on 13 March 2025

17.2 Clauses 3.3 and 3.10 of the Deed read together, would appear to limit the right of the Plaintiff's to initiate suit in Fiji against an entity, which is not a party to the Deed. Construed properly, any claims arising under the Deed may only be initiated in New Zealand by and against the parties to the Deed of Settlement entered into in the High Court of New Zealand proceeding, CIV 2020-404-1693.

17.3 The Court finds assistance in the legal principles applicable to 'consent orders' in reviewing the terms of the 'Deeds of Settlement,' entered into in the Auckland Registry -CIV 2020-44-1693 on 9 March 2022, because the nature and effect of its terms on parties is similar to that derived from consent orders, to *compromise* the underlying action, or proceeding, in Court. The Supreme Court articulated the applicable principle, in Jubilee Juice Distributors v Jai Dhir Singh-Civil Petition CBV 0006 of 2014;

*"[26] A judgement by consent is just as effective by way of estoppel as a judgment whereby the Court exercises its mind in a contested case (vide: Re South American & Mexican Co. 1895 (1) Ch 37 at 50).*

*[27] Upon a compromise being effected, the right of action upon the original claim is lost. Any action thereafter must be on the compromise and not upon the original claim (see: C.G Weeramantry, *The law of Contracts, Vol II, 2<sup>nd</sup> Reprint (2013) section 735*)"*

17.4 Based on the principles articulated in the *Jubilee Juice Distributors* case , the initiation of proceedings in this Court against Yadua Island (Fiji) Ltd, would be an attempt to launch new proceedings, contrary to the *compromise* reached between the parties in the Deed of Settlement, before the High Court of New Zealand, on 9 March 2022. It appears that the Plaintiff is seeking to re-open issues already compromised by the Deed of Settlement, by initiating suit against an entity, not party to the Deed of Settlement, in Fiji.

18. The Plaintiff has not satisfied the threshold of establishing a serious case based on pleadings to warrant the grant of an interlocutory injunction against the Defendant.



19. Further, and in the alternative, the Court has not been able to elicit a coherent cause of action, against the Defendant, Yadua Island (Fiji) Ltd in the Statement of Claim, indorsed in the Writ of Summons, filed on 30 January 2025. In its written submissions, the Plaintiff had asserted *that the Defendant was sued because CMSL is the controlling entity of the Defendant. From the Deed, all administrative and legal matters relating to Yadua Island is being undertaken by CMSL-evidence of this is the Deed itself. CMSL has the powers to make decisions relating to ownership etc of Yadua Island Pte Ltd*".
20. It is a position that is not reflected in its pleadings. Further, it is established at law generally, that a parent company is not liable for the acts of its subsidiaries. The parent and subsidiary companies, are separate entities with separate legal liabilities, for their acts and omissions. This rule has come under scrutiny in recent years in cases such as *Vedanta Resources PLC & Anor v Lungowe & Others* [2019] UKSC 20 and *Okpabi & Others v Royal Dutch Shell PLC* [2021] UKSC 3, wherein the Supreme Court (England), was required to rule whether a parent company could owe a duty of care to claimants in respect of the acts of its subsidiaries in creating 'serious environmental risks'. The Supreme Court ruled in these cases that the claimants had established triable cases to be dealt with in the lower courts. Commentators,<sup>4</sup> have indicated that these cases are heavily fact and context specific. This is not such a case, in any event, in that the direct parent company of the Defendant, is not CMSL, but rather, Bishops Holdings (Fiji) Ltd, further, the grievance, as it were, is alleged directly against the parent company, CMSL, although it is not a party in this proceeding. The facts in this case are not aligned to the facts in cases like *Vedanta* and *Okpabi*, in any coherent way. Neither, CMSL nor Bishops Holding (Fiji) Ltd are parties to this proceeding.

The Court cannot decipher a serious case in the manner the Plaintiff has pleaded its case, against Yadua Island (Fiji) Ltd, to warrant the grant of an injunction.

21. Finally, as a preliminary issue, in the Writ of Summons filed on 30 January 2025, a permanent injunction was not sought as final relief. In *Goundar v Fiesty Ltd* [2014] FJCA 20, the Court of Appeal held'

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<sup>4</sup> Karen Cargill" **Parent company liability for the acts of its subsidiaries'**(14/11/23) [https:// www.marsh.com](https://www.marsh.com)

- “32. *The application for injunction needs to be refused in limine, as there is no permanent injunctive relief sought in the claim. His only claim is for damages for trespass and negligence against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, respectively. In American Cyanamid v Ethicon Ltd [1975] UKHL 1; 1All ER 504 at 510, Lord Diplock held;*
33. *How can a Plaintiff seek interlocutory injunctive relief without seeking a permanent injunction is a fundamental issue that had been overlooked in the court below, but this was central to the application for any injunction and since there was no permanent injunction sought this application for interim injunction should have been rejected in limine”.*
22. The remedy that the Plaintiff seeks in the Writ of Summons, filed on 30 January 2025, is wholly monetary, (after the issue of the removal of caveat was affirmed in a ruling of 3 February 2025). No permanent injunctive order has been sought in the Writ of Summons, directly, or on an alternative basis, against the Defendant and in accordance with the Court of Appeal ruling in *Goundar*, the application for an interlocutory injunction is dismissed *in limine*, also.
23. The Summons for an Injunction is refused on the basis of principle; that no serious case has been established to warrant the grant of an injunction, and alternatively, on the failure to plead permanent injunctive relief.

## FINDINGS

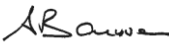
24. Based on the sequential approach affirmed by the Court of Appeal in *Sea Pilots (Fiji) Ltd v Peckham* [2025] FJCA 12, for the application of the principles governing interlocutory injunctions, the Court finds that the Plaintiff has not demonstrated that there is a serious case to be tried, and the Court dismisses the application for injunction, without the need for considering other steps, such as prejudice to the parties (irreparable harm), and balance of convenience.
25. For the sake of completeness however, the Court would indicate that had it been necessary or possible, to consider these additional steps, it would on balance, have found for the Defendant, on both requirements. The Plaintiff’s claim is a monetary one, and the Court would have found it difficult, based on this, to find against the Defendant, both on the issue of prejudice and balance of convenience,

to warrant the grant of an injunction to stop it from conducting its operations, on Yadua Island.

**ORDERS:**

- (I) The relief sought in the Summons [For an Injunction] filed on 13 February 2023 are refused in their entirety and dismissed.**
- (II) Costs to the Defendant, summarily assessed at FJD\$2000 to be paid within 21 days of this Ruling.**



  
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Savenaca Banuve  
Judge of the High Court

**At Suva**  
**28 March 2025**