

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

CIVIL CASE NO: HBC 124 OF 2025

BETWEEN: **MAGNA EXTERIORS INC** **APPLICANT**

A N D: **ASHWEEN KUMAR** **DEFENDANT**

Counsel: Mr. K. Chang for the Plaintiff

Date of Order: 19th May 2025

ORDER

(of Foreign Judgment (Reciprocal Enforcement))

1. The Plaintiff filed this *ex-parte* originating summons pursuant to Orders 7 and 71 of the High Court Rules, Section 4 of the Foreign Judgment (Reciprocal Enforcement) Act 1935, and Rules 2 and 3 of the Reciprocal Enforcement of Judgment Rules 1922, seeking leave to register the judgment of the Superior Court of Justice, Ontario, Canada, obtained against the Defendant (hereinafter referred to as “the judgment”) under the Foreign Judgment (Reciprocal Enforcement) Act.

2. The *ex parte* originating summons is supported by an affidavit from Ira Nishisato, a partner at Borden Ladner Gervais LLP, a Canadian law firm, who serves as the Plaintiff's lawyer in Canada, outlining the reasons and background for making this application.
3. According to the affidavit, the Ontario Superior Court of Justice, on the 26th of February 2020, delivered a judgment against the Defendant and ordered him to pay the Plaintiff damages of CAD \$2,236,421.64, punitive damages of CAD \$25,000, and special damages of CAD \$12,468.44. Furthermore, the Court ordered the Defendant to pay the Plaintiff CAD \$729,959.72 as legal costs and CAD \$106,261.60 as pre-judgment compound interest, in addition to the previously mentioned damages, bringing the total amount to CAD \$3,110,111.40.
4. Section 9 (1) of the Foreign Judgment (Reciprocal Enforcement) Act 1935 grants the President the authority to declare by proclamation that Part II of the Act applies to any judgment obtained in the Courts of any Commonwealth country outside Fiji. Section 9 (1) of the Act states:

“The President may by proclamation direct that this Part shall apply to any country or territory of the Commonwealth outside Fiji and to judgments obtained in the courts of such countries or territories as it applies to foreign countries and judgments obtained in the courts of foreign countries, and, in the event of the President so directing, this Act shall have effect accordingly and the Reciprocal Enforcement of Judgments Act 1922 shall cease to have effect except in relation to those parts of such countries and territories to which it extends at the date of the proclamation”

5. Proclamation No. 8 of 1950, issued on 30 June 1950 pursuant to Section 9 of the Foreign Judgment (Reciprocal Enforcement) Act 1935 (I must express my gratitude to Mr. Chang, the Learned Counsel for the Plaintiff, for submitting a copy of the Proclamation), states:

“Whereas by subsection (3) of Section 9 of the Foreign Judgment (Reciprocal Enforcement) Ordinance it is provided that the Governor may by proclamation direct that Part II of the said Ordinance shall apply to His Majesty’s dominions outside the Colony and to judgments obtained in the Courts of the said dominions.....”

6. Fatiaki J (as His Lordship then was) in **In re Foreign Judgments (Reciprocal Enforcement) Act [1996] FJHC 121; Hbc0019j.95s (27 June 1996)**, found that Canada falls within the meaning of His Majesty’s dominions outside the Colony as stated in Proclamation No 8 of 1950. Hence, the judgment delivered by the Ontario Superior Court of Justice on the 26th of February 2020 fits the definition of a foreign judgment stipulated under the Act.

7. This application is made within six years after the date of the Judgment as required under Section 4 (1) of the Act. The Affidavit of Mr. Ira Nishisato states that this judgment fulfils the requirements outlined under Section 3 (2) of the Foreign Judgment (Reciprocal Enforcement) Act. Section 3(2) of the Act states:
 - i) *It is final and conclusive as between the parties thereto; and*

 - ii) *There is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and*

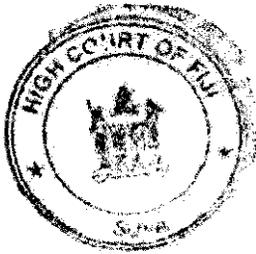
 - iii) *It is given after the coming into operation of the proclamation directing that this shall extend to that foreign country.*

8. Moreover, the Affidavit of Mr. Ira Nishisato states that this judgment has not been satisfied and cannot be enforced in Canada.

Orders:

9. Considering the reasons outlined above, I make an order pursuant to Rule 6 of the Reciprocal Enforcement of Judgment Rules, granting the Plaintiff leave to register the judgment of the Ontario Superior Court of Justice, dated 26th of February 2020, delivered against the Defendant.

10. The judgment debtor may apply to this Court by summons within twenty-eight days after the service of the notice of registration under Rule 11 of the Reciprocal Enforcement of Judgment Rules to set aside the registration or suspend the execution of the judgment.



A handwritten signature in black ink, appearing to be "R. D. R. T. Rajasinghe".

.....
Hon. Mr. Justice R. D. R. T. Rajasinghe

At Suva

19th May 2025

Solicitors

Howards Lawyers for the Plaintiff.