

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

CASE NUMBER: HBC 342 OF 2024

BETWEEN: **R. HOOKER PTE LIMITED**

PLAINTIFF

AND: **NIVESH STANLEY JOSEPH**

DEFENDANT

Appearances: Mr. S. Singh for the Plaintiff.

Mr. M. Saneem for the Defendant.

Date/Place of Judgment: Friday 25 July 2025 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

RULING

Cause and Background

1. The plaintiff has filed an application for injunction against his former employee, the defendant. The plaintiff seeks that the defendant be restrained from using the plaintiff's confidential sales information, from making contact with the plaintiff's customers, and from using the plaintiff's viber platform.

Grounds in Support

2. The plaintiff says that it is engaged in the real estate business since 2012.
3. The defendant was employed by the plaintiff from 19 March 2021 until 30 August 2024. Before that, he was an employee of the plaintiff from 2016 to 2020.
4. The defendant had resigned in August 2024 and gave 30 days' notice. His last day of work was 30 August 2024.

5. The plaintiff says that he had paid the defendant until 30 August 2024 but since he displayed a careless attitude to work and instigated other members, he had asked the defendant to stop coming to work from 16 August 2024.
6. The plaintiff says that he had concerns with the defendant's attitude to work from June 2024. According to the plaintiff, it was a requirement of the resignation that the defendant enters into a Fidelity Agreement so that the defendant does not cause harm to the plaintiff's business post his resignation. The Fidelity Agreement was entered into on 30 August 2024.
7. It is contended that the Fidelity Agreement strictly prohibited the defendant from using the plaintiff's confidential information for his own benefit or the benefit of third parties and from retaining or distributing any confidential or proprietary materials belonging to the plaintiff. The defendant is alleged to have breached this agreement.
8. The plaintiff says that the ways in which the defendant has breached the Fidelity Agreement is as follows:
 - a. *The defendant has continued to use the plaintiff's viber channel, which contained 841 members, for unauthorized communications.*
 - b. *The defendant has contacted the plaintiff's clients and their legal representatives to follow up on settlement matters, despite no longer being authorized to do so.*
 - c. *The defendant remains in possession of the training documents belonging to the plaintiff and has distributed these materials to the current employer.*
 - d. *The defendant has transferred confidential company documents to Google Drive without authorization.*
9. The plaintiff says that the defendant's actions have caused the plaintiff significant harm including reputational damage, financial losses and disruption to the plaintiff's operations and client relationships.
10. It is said that the defendant has started operating the business of Civic Homes, a real estate company from December 2024. The plaintiff says that he has seen listings on Facebook and Viber channels. The plaintiff says that he believes that the defendant is using confidential information acquired by him

during his employment and using his existing client information for his own business use. The plaintiff says that he has seen at least 6 properties listed by the defendant for sale or rent which are his clients properties who the defendant used to work with whilst being employed with the plaintiff. The defendant is poaching on his clients and the plaintiff is prejudiced.

11. The plaintiff says that his confidential information remains at risk of further unauthorized use and distribution by the defendant.
12. The plaintiff says that he has invested significantly in the defendant with the expectation that appropriate protections would prevent him from misusing confidential information. The defendant has conducted at least 144 open homes in the last 3 years as an employee of the plaintiff. He has access and control over the clients who visited all these open homes.

Law and Analysis

13. The plaintiff's claim stems from the Fidelity Agreement entered into by the parties on 30 August 2024. This is made clear by paragraph 3 of the affidavit in support. The plaintiff says that part of the defendant's resignation required him to enter into a Fidelity Agreement so that he does not cause harm to the plaintiff's business post his resignation.
14. It is not disputed that the defendant had already resigned from the employment in August 2024. His resignation was effective on 30 August 2024. The defendant says that the plaintiff forced him to sign the Fidelity Agreement on the final day of his employment. He says he had no option as the plaintiff was holding onto his commission of \$18,132.62 which he was entitled to for deals which he had settled.
15. The defendant says that he did not execute any such Fidelity Agreement with the plaintiff until he resigned. They made him sign the agreement in his notice period and he had to do so in order to be able to get his commission.
16. The defendant says that even though he signed the agreement, he was never paid. He would have never signed the same if it was not for his commission.
17. I find the Fidelity Agreement to be highly questionable in law and equity. It did not form part of the contract of employment when the parties entered into the employment relationship. Whether it could be fairly be entered into on the final day of the employment and whether it was entered into freely and

voluntarily needs determination. Since it was not part of the contract of employment, the plaintiff cannot rely on it to seek injunctive orders against the defendant.

18. I must mention that the plaintiff had stopped the defendant from coming to work from 16 August 2024. He had paid him until 30 August 2024. This indicates that the resignation was accepted and the contractual relationship had come to an end because the plaintiff did not want the defendant to even work the notice period. It is of concern in law and equity as to how the plaintiff can then impose a condition that for the defendant's resignation to be accepted, a Fidelity Agreement needs to be entered into. I find the circumstances in which it was entered into to be questionable.

19. No claim for injunction can be sustainable on such a questionable agreement which does not form part of the contract of employment.

20. Let me turn to the issue of poaching clients. There is no evidence of poaching. The plaintiff is saying that the following persons were his clients which the defendant has now taken over:

- “(a) John Jitendra Pratap of Lot 52 Howell Road.*
- (b) John Jitendra Pratap of Lot 3 Omkar Road.*
- (c) John Jitendra Pratap of Lot 55 Mana Street, Narere, Stage 2.*
- (d) Dip Narayan Lot 12 Alipate Road.”*

21. Indeed, the persons named above had entered into an agreement with the plaintiff in 2023 and 2024. All these agreements have expired. The plaintiff has not been able to show to me that he had renewed the agreements with these persons. These persons are therefore no longer clients of the plaintiff. They are former clients who are free to choose new real estate agents to sell their properties.

22. In any event, if the plaintiff has lost these clients due to the defendant's action of procurement, then the plaintiff's claim lies in damages which is an adequate remedy. The plaintiff can easily establish the extent of the damages in the trial.

23. The plaintiff has only provided few agreements with some named persons to say that they are his clients. I have only dealt with those specific agreements. The plaintiff cannot expect me to deal with those other clients in respect of which there is no contract of agency or evidence of service performed. He cannot claim that all those persons who have engaged the defendants are his clients. He has to establish that through the evidence.

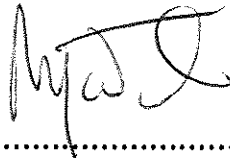
24. I find that the plaintiff's application amounts to restraining the defendant from being gainfully employed in that the defendant is also a real estate agent. If he is not able to get vendors to engage him, he will effectively not find a way for his living. He has the right to engage vendors who are not bound by an existing agreements with the plaintiff.
25. I therefore find that in absence of any binding legal agreement, this court cannot restrain the defendant from his right to full and free participation in the economic life of the state, which includes the right to choose his own work, trade, occupation, profession or other means of livelihood: *section 32 of the Constitution of Fiji*.
26. In respect of the Viber Group, the defendant says that he created a Viber Group with clients and the plaintiff used to be in the same. Sometimes later he removed himself. He says that as far as he is aware, all agents of the plaintiff made Viber groups.
27. The defendant says that on 21 October 2024 he left the Viber Group and that he does not have access to it nor did he have any other means to contact anyone in the said group.
28. The plaintiff has failed to establish via any cogent evidence that the defendant is still part of a Viber group and that he is contacting his clients for business. It is not difficult to establish that and in absence of any such evidence I accept the defendant's evidence that he is no longer on any Viber group for the plaintiff to feel threatened.
29. There is also no evidence to indicate that the defendant continues to contact the plaintiff's existing clients and their legal representatives to follow up on settlements or that he is in possession of the training materials and is using the same for the benefit of his clients. These are just bare allegations without an iota of evidence. The plaintiff's allegation that the defendant has transferred the company documents to Google Drive without authorization is not supported by any evidence to be considered for determination.
30. I find that there is no prejudice to the plaintiff if the defendant is to continue operation of his business. If there is any prejudice or breach of any employment contract, the plaintiff can be compensated in damages. On the other hand, the defendant will be deprived of his livelihood if I were to give an order stopping the defendant from engaging with clients who are now no longer the clients of the plaintiff.

31. I find that the plaintiff has improperly insisted on his injunction application being heard when the parties were given a chance to resolve this matter and consider the application given the lack of evidence. The plaintiff's insistence has put the defendant to costs in defending the application. This could have been saved, given that the plaintiff had legal representation to properly advise him of the strengths and weaknesses in his evidence to mount a claim in injunction. It is only fair that costs of the proceedings be paid by the plaintiff.

Final Orders

32. I do not find any basis for the injunction. I refuse the same. The application is dismissed with an order for costs of \$5,500 to be paid to the defendant within 21 days.

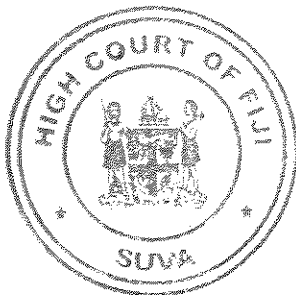
33. The action is to be listed before Master once Summons for Directions is filed.



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Hon. Madam Justice Anjala Wati

Judge

25.7.2025



To:

1. *Shelvin Singh Lawyers for the Plaintiff.*
2. *Saneem Lawyers for the Defendant.*
3. *File: Suva HBC 342 of 2024.*