

N THE HIGH COURT OF FIJI
CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No. HBC 138 of 2021

BETWEEN: **NAGARAJU THANDU** of Auckland, New Zealand.

PLAINTIFF

AND: **RAJNAL ROHINESH KUMAR** of Lot 204, Vuci Road, Nausori.

FIRST DEFENDANT

AND: **PARMESHNI LATA** of Lot 204, Vuci South Road, Nausori.

SECOND DEFENDANT

For the Plaintiff/Respondent : Mr Singh R. P. and Ms Swamy A.
For 1st and 2nd Defendants/Applicants: Mr. Ajmeer M. H.
Before : Waqainabete-Levaci, SLTT, Puisne Judge
Date of Hearing : 15 August 2025
Date of Judgment : 26 November 2025

JUDGMENT

(APPLICATION FOR INTERIM INJUNCTION TO BE EXTENDED AND DISCHARGE OF CHARGING ORDERS)

PART A – BACKGROUND

1. The Plaintiff/Respondents and Applicant/Defendant's entered into a Share Purchase Agreement (referred to as SPA) between Winnovatia Business Solutions PVT Ltd (Purchaser), a Company incorporated in India and Aper Motors Ltd (Seller), a limited company incorporated in Fiji. The SPA agreed that a share value of \$265,

625.00 was to be transferred to the Purchaser. The 1st Defendant executed the SPA as representative of the Defendants.

2. The Applicant/Defendant's admitted liability and sort for Quantum of liability to be determined at trial.
3. In the Judgement of the High Court, the Court determined that Defendant/Applicant jointly and severally owed a debt of \$242, 179.00 fjd together with interest at 30% per annum from 8th May 2020 till payment in full and costs of \$2000.
4. The Plaintiff/Respondent then applied and was granted Charging Orders being made *Nissi* on 15 November 2022 against the properties known as
 - (a) Certificate of title No. 29788 Land known as Burenicagi on Lot 8 of DP 3046 in the district of Rewa (referred herein as 'the residential property');
 - (b) The Defendants shares in Aper Motors Limited having its registered office at 204 Vuci South Rd, Nausori, Fiji;
 - (c) The Defendants shares in Aper Fashion Limited, a limited company having its registered office at Shop No. 4, at Haxagon Complex, Koronivia, Fiji (herein after referred to as the 'Company No 2').
5. The Charging Orders *Nissi* was extended until a further Hearing in which the Court made these Nissi Orders Absolute on 8th May 2025.
6. The Applicant/Defendant thereafter filed two Summons.
7. The First Summons filed on 20 May 2025 (referred to as 'Summons for Stay of Execution') sort for:
 - (1) An Order for Stay of Execution of Judgment delivered on 8th May 2025 and all proceedings pending the determination of the Appeal in the Court of Appeal;
 - (2) An Order for all enforcement and execution proceedings arising from the said judgment be stayed, including any transfer, sale or dealing with:
 - A. The Applicant/Defendant's real property - Certificate of title No. 29788 Land known as Burenicagi on Lot 8 of DP 3046 in the district of Rewa;
 - B. The Defendants' shares in Aper Motors Limited and in Aper Fashion Limited;

- (3) An order that the Respondent/Plaintiff be restrained from taking any further enforcement action or registration of charges in relation to the subject property or shares until the final determination of the Defendant's action application presently before the Court of Appeal;
8. The Applicant/Defendant thereafter filed another *Ex-Parte* Summons on 25 June 2025 (referred to as 'Summons for restraining orders') seeking the following Orders:
1. An Order that the charge made absolute on Lot 8 on DP 3046 Certificate of Title No 29788 containing an area of one rood and one perch, be discharged;
 2. Alternatively, that the charge made absolute on Lot 8 on DP 3046 Certificate of title No 29788, containing an area of one rood and one perch be stayed;
 3. That the Plaintiff be restrained by themselves, their servants or agents or whosoever from calling and or selling by Tender of residential property being the Native Grant No. 13 & 15, land known as Burenicagi and Vunivesi in the District of Rewa, in the island of Viti Levu being Lot 8 on DP 3046 Certificate of Title No 209788 containing an area of one rood and one perch, until further order of this Honorable court;
 4. Alternatively, the Plaintiff/Respondent be restrained by himself, his servants, or agents or whosoever from calling and or selling by Tender of residential property being the Native Grant No 13 and 15, land known as Burenicagi and Vunivesi in the District of Rewa, in the Island of Viti Levu being Lot 8 on DP 3046 Certificate of title No 29788 containing an area of one rood and one perch, until the Fiji Court of Appeal deal with the Appeal being ABU 045 of 2025 emanating from the decisions in HBC 138 of 2023
9. Having heard the parties *Ex-Parte*, granted the application for interim Restraining Orders in accordance with clauses (3) and (4) above and directed that the said Summons be made inter-parte.
10. The Summons for Stay of Execution was adjourned to another date to be called up together with the Summons for Restraining Orders.
11. On the date of Hearing, the parties agreed to make submissions on both the applications one after another.

12. Having proceeded to make their submissions, Counsel for the Applicant/Defendant conceded that the two applications would have the same effect and thereafter agreed that the Application for Leave to Appeal Out of Time in the Court of Appeal would be withdrawn given that the Court was willing to hear the parties on the Summons for Restraining Orders.
13. Counsel for the Applicant/Defendant thereafter filed a supplementary Affidavit to that effect and made an application in Court orally to withdraw their Application for Stay of Enforcement pending Leave to Appeal out of time.
14. The Court granted the said application and thereafter proceeded to hear and determine the parties on the basis of the Application to restraint the sale and assignment of the said residential property.

PART B: AFFIDAVITS

Affidavit in Support and Supplementary Affidavit

15. The Defendant/Applicant deposed on his behalf and on behalf of the Second Defendant, his wife, stating that the Charging Orders made absolute were imposed against his property and his company shares.
16. He deposed that the Defendant/Applicant had admitted to liability but contested quantum as the sum claimed as a matter to be proven by evidence at trial or in the alternative, by way of arbitration in accordance with the Share Purchase Agreement 2018.
17. That despite contesting quantum, summary judgement was entered against them after the Judge made sit decision based on Affidavits. They contested that only one of them was a director of the company and hence could not be sued on their personal capacity.
18. He deposed that interest accrued from the date of Judgement in September of 2022 until payment and that in absence of notice of default, making the Charges Absolute is premature and irregular.
19. He also deposed that the enforcement orders was disproportionate as no evidentiary hearing on the interest computation or valuation of shares was made.

20. He deposed that pursuant to Order 50 of the High Court Rules, the Respondents were required to seek Judicial Orders the sale of the mortgaged property.
21. He deposed that the Solicitors for the Respondent/Plaintiff had advertised in the Fiji Sun for the tender of the said residential property without any orders of the High Court in accordance with Order 50 of the High Court Rules.
22. He then deposed that they had appealed the Judgement of Justice Brito Mutunayagam by seeking Leave before this Court to Appeal out of time on the basis of the abovementioned arguments.
23. Towards the end of the proceedings, the Counsel for the Appellant had sort to withdraw their application for Stay pending Leave to Appeal out of Time as he had conceded that injunctive orders sort would emanate and arrive at the same results against the Respondent/Plaintiffs. He also admitted that the Court of Appeal had already dismissed their Application for Leave to Appeal out of Time and hence he admitted there was no footing to rely upon.
24. Counsel then sort to pursue the Summons for Restraining Orders.
25. A Supplementary Affidavit was filed by the Applicant/Defendant seeking Orders for the Discharge of the Charge or alternatively restraining of the Respondent/Plaintiffs actions to sell or assign or tender for sale the said residential property.
26. The Applicant/Defendant deposes that the Plaintiff is attempting to sell the residential property which is personally owned by the Defendants as a family home.
27. The Applicant/Defendant deposes that an application to set-aside the fresh action has been filed in HBC 262 of 2025 and hence there is a strong arguable grounds with likelihood of success challenging the validity of the judgement.
28. The Applicant/Defendant deposes that if stay is not granted the application in HBC 262 of 2025 will be rendered nugatory and irreparable and prejudicial if the property would be sold prematurely if the Court deems that the enforcement was wrongful.

Affidavit in Opposition and Supplementary Affidavit by Respondent

29. In response the Respondent/Plaintiff has deposed that the Applicant/Defendant intends to re-litigate the matter which is an abuse of process when the Fiji Court of Appeal had dealt with all factual disputes and dismissed the application of extension of time.

30. Another application for Appeal was filed in May 2025 in which security of costs had not been fixed. The matter was affixed before Chief Registrar in July 2025 to determine their position.
31. The Respondent/Plaintiff deposed that they believed all matters were absolved when liability was admitted by the Applicant/Defendant to the entire matter on 25th February 2022 and by consenting at the hearing of the summary judgement as per the Court of Appeal's ruling on 27 June 2025.
32. The Respondent/Plaintiff deposed he admitted that the Defendants befriended him and made representations pertaining to their business venture in Fiji seeking assistance for the business in importing second hand motor vehicles. Despite an offer by the Defendants to obtain a business work permit, he applied for work permits, this was not activated by the Defendants.
33. The Respondent/Plaintiff stated a share and purchase agreement was executed by the Defendant as Director of Aper Motors Ltd, however no monies were paid nor share Capital increased or shares transferred. The Agreement was signed in March 2020 to refund monies to him after it was requested by the two Defendants that after judgement was delivered on 22 September 2022, an application for leave to appeal out of time was refused by the Court of Appeal in a judgement of 27th June 2025.
34. The Respondent/Plaintiff deposes that it is unfair and prejudicial for the judgement not to be executed in favour of the Plaintiff. Furthermore that Bred Bank was informed by letter of the sale of the property and was provided by Bred Bank on the valuation of the property.
35. The Respondent/Plaintiff also argued that the advertisement for sale of the residential property was not premature and unlawful and did not violate the 6 months moratorium on enforcement as per the High court rules. The Applicant/Defendant now owes \$619,907.77 (Six Hundred and Nineteen Thousand, Nine Hundred and Seven Dollars, Seventy Seven Cents) as at 2 July 2025.
36. Finally the Respondent/Plaintiff deposes that the undertaking of damages for the two motor vehicles is not sufficient for the harm created from the restraining orders imposed.

PART C: LAW AND ANALYSIS FOR EXTENSION OR PERMANENT INJUNCTION

37. The Court must consider the application to extend the restraining orders pending the Claim made to set-aside the consent judgement orders in 2022.

38. The Application before the Court seeks the orders for restraint the Respondent/Plaintiff and his servants and agents from the sale, assignment or tender of the said residential property.
39. In Goundar -v- Fiesty [2014] FJCA 20; ABU 0001.2013 (5 March 2014) it was held by the Court of Appeal that :

Bank Mellat v Nikpour [1985] FSR 87 was a decision of this court relating to a Mareva injunction. On an inter partes application a judge discharged the injunction on the ground that there had not been a full and proper disclosure of the facts by the plaintiffs. On appeal the plaintiffs argued that, if there had been a non-disclosure, it had been innocent. The court dismissed the appeal, holding in effect that even innocent non- disclosure was fatal. Lord Denning MR said (at 89):

'When an ex parte application is made for a Mareva injunction, it is of the first importance that the plaintiff should make full and frank disclosure of all material facts. He ought to state the nature of the case and his cause of action. Equally, in fairness to the defendant, the plaintiff ought to disclose, so far as he is able, any defence which the defendant has indicated in correspondence or elsewhere. It is only if such information is put fairly before the court that a Mareva injunction can properly be granted ... '

Donaldson LJ said (at 90):

'This principle that no injunction obtained ex parte shall stand if it has been obtained in circumstances in which there was a breach of the duty to make the fullest and frankest disclosure is of great antiquity. Indeed, it is so well enshrined in the law that it is difficult to find authority for the proposition we all know it is trite law.. '

Was there full and frank disclosure

40. In their argument, the Applicant/Defendant seeks that the restraining orders remain as there are pending applications pertaining to an Appeal. On the date of hearing, Counsel for Respondent/Plaintiff revealed that the application for Leave to Appeal out of time had been dismissed by the Court of Appeal and hence any application for stay of the Execution of the Orders could not subsist.

41. It was on this basis that the Application for Stay of Execution was withdrawn and furthermore, the Application for Leave to Appeal was also withdrawn.
42. The Applicant/Defendant has argued that they had not consented to the quantum of liability which was to be determined by court. However there are Affidavit evidences and court records that show that the Applicant/Defendant was present through his counsel who had admitted on his behalf to the Summary judgement based on affidavit evidences.
43. Although the Applicant/Defendant has argued that they are Directors of the company and that the residential property is not owned by the company, the Applicant/Defendant has failed to rebut the argument that they admit to liability and that the liability admitted included both the Defendants personally.

No Substantive claim

44. Secondly, in the application for restraining orders by the Applicant/Defendant, there is no substantive action seeking for permanent injunction. Given that there is no substantive action, the action before this court cannot stand in limine as was determined in the case of Goundar -v- Fiesty (Supra) where it was held that:

“So, in conclusion I affirm the decision of the court below that the application for interim injunction should be refused. In my judgment it should be dismissed *in limine*, as there was no claim for permanent injunction. Even an amendment to include such relief would not help for other reasons given in this judgment. I do not agree with the decision of the court below for striking out of the writ of summons and the writ of summons needs to be reinstated. Considering the circumstances of the case and since this appeal is partially allowed, I do not wish to award any costs.”

45. Given that the application has no substantive action, the application for interim injunction to be extended cannot be upheld in this action. There is a separate existing application for setting aside by way of Writ. That matter will take its course and has nothing to do with this matter before the courts.
46. Furthermore, section Order 50 rule 9 of the High Court Rules allows for applications for injunctions to be ancillary or incidental to the application for charging orders of land or securities in accordance with rule 2 and 9.

47. Given that the substantive application is for the discharge of the charging orders, the application for restraining orders being made final or extended further cannot be sustained as a case is not made out by the Applicant/Defendants.

PART D: DISCHARGE OF CHARGING ORDERS

48. The Applicant/Defendant has sort alternative Orders for the removal of the Charging Orders that were made Absolute. The basis of their argument is that the charging orders were made irregularly.

49. Order 40 Rule 7 of the High Court Rules provides as follows:

The Court, on the application of the judgement debtor or any other person interested in the securities to which the order under rule 2 relates, may at any time, whether before or after the order is made absolute, discharge or vary the order on such terms (if any) as to costs as it thinks just.

50. The powers exercised by the Court to Discharge the Charging Orders are discretionary.

51. The imposition of a charging order is for a satisfaction of a debt and upon registration on the land becomes an encumbrance similar to that of a debt. Therefore unless the Charging Order is discharged, pursuant to section 72 of the Property Law Act, the mortgagee has the right of redemption up until the time in which the property is transferred by the registration of titles.

52. In Niko Kiki Tikomailepanoni Nadolo and Iliseva Nasau Nadolo -v- Umesh Chand and Prasanjit Narayan and Others [20254] FJCA 94; ABU 096.2020 (30 May 2024) in para 9 stated:

[9] For the purposes of this appeal and in the circumstances of this case, I consider the Judges pronouncements above relating to the registration of the judgement having the effect of a charge or mortgage against the title to the property and that the rule of equity including the Mortgagors right of redemption applies to a judgement creditor sale of the property to be a correct statement of the law in Fiji.

[10] It was common ground that all monies due under the judgment were available for payment to the Second Respondents (mortgages). The second respondents did not take part In the appeal no doubt because all monies due to them under the judgement debt had been tendered for payment to them.'

53. In Bank of Baroda -v- NMB Finance Ltd (Fiji) Ltd [2017] FJHC 695; HBC191.1998L (22 September 2017) Tuilevuka discharged the charging Orders by determining the following:
- 67. *Under Order 50 Rule 7, I have authority to discharge or vary a charging order at any time before or after the order is made absolute, on the application of the judgment debtor or any other person interested in the securities.*
 - 68. *The application before me was made by SICL as a person interested in any affair concerning its issued shares. However, I think that the best way to resolve the issues I have raised is to order that the new shareholders be added as parties.*
 - 69. *I have set out above all the evidence, and the facts which may be deduced from them, which tend to confirm that beneficial entitlement in this case had passed from NMBFL long before the money judgement was entered by Connors J in 2005 and well before the charging orders were granted by Finnigan J in 2006. Nothing however is conclusive on the evidence before me now.*
54. In the facts before me, the Applicant/Defendant has argued that the Charging Orders are to be discharged as the Respondent/Plaintiff had entered consent orders and summary judgement without the evidence being contested and tried.
55. Furthermore the Applicant/Defendant argues that the Respondent/Plaintiff's quantum of claims and interest is incorrect.
56. The Applicant/Defendant has also argued that the charging orders were entered against the residential home which they personally own, despite only one of them being a director of the said company, for which they are alleging owes them monies.
57. Finally the Applicant/Defendant argued that the Respondent/Plaintiff intends to sell, assign or call for tender of the residential property without firstly obtaining judicial orders.
58. The Respondent/Plaintiff argued that the summary judgement entered had already been determined by the High Court and confirmed by the Court of Appeal.
59. The Respondent/Plaintiff also submitted that the charging orders were entered against the properties as judgement debtors.

60. In *Farm 2 U fresh Ltd -v- Tivi West Pte Ltd* [2025] FJHC 53; HBC 187.2014 (17 February 2025) Lakshman J cited the principles as to when not to grant a Charging Order absolute in the case of **Lord Brandon** in *Roberts Petroleum Ltd v Bernard Kenny Ltd (in liquidation)*[1981] EWCA Civ 10; , [1982] 1 All ER 685 and on Appeal in the House of Lords as follows:

(6) The following combination of circumstances, if proved to the satisfaction of the court, will generally justify the court in exercising its discretion by refusing to make the order absolute: (i) the fact that the judgment debtor is insolvent; and (ii) the fact that a scheme of arrangement has been set on foot by the main body of creditors and has a reasonable prospect of succeeding.

(7) In the absence of the combination of circumstances referred to in (6) above, the court will generally be justified in exercising its discretion by making the order absolute.”


61. The Court finds therefore that the Applicant/Debtor has not satisfied the debt and has not shown reasonable grounds that they are insolvent.

62. It is for this reason the court will not exercise its powers to discharge the Charging Orders made absolute.

Orders of the Court:

- (a) ***That the application to withdraw the Application for Stay of Execution is granted;***
- (b) ***That the Application for restraining Orders to be extended is dismissed;***
- (c) ***The Application to discharge the Charging Orders is hereby dismissed;***
- (d) ***Costs of \$1000 awarded to the Plaintiff equally divided as costs against the Defendants.***




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Ms Senileba LTT Waqainabete- Levaci
Puisne Judge