

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 302 of 2025

IN THE MATTER of an application to set aside and/or to revoke a Departure Prohibition Order pursuant to section 104 of the Fiji National Provident Fund Act 2011.

BETWEEN : **PARVISH NIKESH KUMAR**
Plaintiff

AND : **FIJI NATIONAL PROVIDENT FUND** a statutory body established under the Fiji National Provident Fund Act having its principal office at Provident Plaza, Level Two, 33 Ellery Street, Suva.
Defendant

Counsel : **Mr N Sharma for the Plaintiff**
Mr R Singh & Mr A Nand for the Defendant

Hearing : **28 November 2025**

Judgment : **28 November 2025**

EX TEMPORE JUDGMENT

[1] Fiji National Provident Fund (FNPF) has raised a debt for outstanding contributions against the employer, Pacific Specialist Healthcare Pte Ltd (PSH). The plaintiff is a director and shareholder of PSH. As part of the recovery of the debt, the Chief Executive Officer of FNPF has issued a Departure Prohibition Order (DPO) against the plaintiff preventing his departure from Fiji.¹

[2] The present proceedings have been brought by the plaintiff to have the DPO revoked.

¹ The plaintiff is currently overseas and, as such, the DPO will only be effective on the plaintiff's return to Fiji.

Background

[3] PSH was incorporated in 2016. It appears that the company has been in operation since 2018. According to the plaintiff, the company is in the business of medical and surgical services in Fiji. It has branches in Nadi and Suva, employing about 150 full time employees and engaging a number of locum doctors. The plaintiff is the chief executive officer, the sole director and a majority shareholder of PSH, holding 55% of the shares. The other shareholders are:

- Solomon Vuimatari 15%
- Asaeli Raiwalui 15%
- Sanson Fousaga 10%
- Alan Biribo 5%

[4] The company has paid its FNPF contributions for its full-time employees. It has not made any contributions for the locum doctors. According to the plaintiff, the locums were employed on a contract for service and, thus, not treated as employees. PSH paid provisional tax to Fiji Revenue and Customs Service (FRCS) for the locums. The locums had withholding tax deducted from their payments.

[5] On 3 April 2025, an FNPF inspector attended PSH's premises to conduct an inspection. The following day, the inspector sought PSH's wage records for the locums which were supplied by PSH the same day.

[6] On 6 June 2025, FNPF issued a notice to PSH claiming outstanding contributions for the locums for the period from 2021 to 2025, in the amount of \$1,049,391.54 plus penalties of \$145,400. The company was advised that it was required to pay these sums within 7 days of receiving the notice, PSH received the notice on 10 June.

- [7] Three days later, PSH requested information pertaining to the debt which was supplied by FNPF on 17 June. PSH engaged solicitors and auditors to advise it on the debt and sought an extension of time to consider its position.
- [8] According to FNPF, it sent an email to PSH on 7 July to advise that it intended to initiate proceedings against the company to recover the debt and such action would include a DPO against the directors and business owners. PSH responded the same day to advise that it had instructed solicitors, requesting that FNPF communicate with the solicitors.
- [9] On 23 July 2025, the CEO of FNPF issued DPOs against all the shareholders of PSH, including the plaintiff, informing the Director of Immigration of the same. They were issued on the basis that each were directors of PSH (the plaintiff is, of course, the sole director of PSH).
- [10] On 25 August 2025, a copy of the DPO against the plaintiff was emailed to him. The plaintiff resides in both Fiji and New Zealand. He is a citizen of Fiji, holding a Fiji passport. He has a residence visa for New Zealand. His family reside in New Zealand. At the time the DPO was issued, the plaintiff was in New Zealand. The plaintiff is still overseas. He states in his affidavit²:

21. I travel almost every few weeks to New Zealand to visit my family members and I have always returned to Fiji as my business interests in PSH are quite substantial and I personally oversee the operations of the business as the Chief Executive Officer and we are not only providing vital medical care but we also provide medical services which are not available anywhere else in Fiji...

22. I also do extensive travel outside of the Fiji/NZ circle due to my current pharmaceutical project which was launched by Ministry of Health recently. As such I have recently returned from India, China and Hong Kong and I have to go to Vanuatu shortly with one other shareholder, Dr Sanson Fousaga, to sign a MoU with the Vanuatu Government for hospital services.

² The affidavit was filed in support of the present proceedings and was executed by the plaintiff on 29 August 2025.

- [11] The plaintiff also states that he owns four properties in Fiji and has annexed the Certificates of Title in his affidavit. The financial statement for PSH for the 2024 tax year, also annexed to the plaintiff's affidavit, shows that the company turned over revenue of \$15 million in 2024³ and for the past two tax years made a net profit of \$456,195 (2024 year) and \$1,955,940 (2023 year) – demonstrating that the company is a significant business entity.
- [12] On 5 September 2025, the present proceedings were filed by the plaintiff by way of an originating summons and supporting affidavit. The relief sought by the plaintiff is revocation of the DPO. FNPF has filed an affidavit in opposition for Mr Peni Gonelevu, Regional Manager Employer Services. The plaintiff has taken the opportunity to file a reply.
- [13] A few final points to note. The debt and penalties remain unpaid by PSH. Other than the DPOs issued against the shareholders of PSH, FNPF has not exercised any of the civil or criminal remedies available to it to recover the alleged unpaid contributions. In contrast, PSH has brought civil proceedings against FNPF to determine its liability to pay the alleged debt; ie Civil Action No. HBC 301 of 2025. Those proceedings are still on foot.

Decision

- [14] The power to issue a DPO under the Fiji National Provident Fund Act 2011 (FNPF Act) is contained at section 104, and reads:

Departure prohibition orders

104 (1) If-

(a) a person is liable to pay an amount as, or on account of, mandated contributions or additional contributions required to be paid by section 38(3);

(b) the amount is due and payable but has not been paid; and

³ And almost \$14 million in 2023.

(c) *the Chief Executive Officer believes on reasonable grounds that it is desirable to prevent the person from departing from Fiji to another county without –*

(i) *fully satisfying the liability; or*

(ii) *making arrangements satisfactory to the Board for the liability to be fully satisfied;*

the Chief Executive Officer may, by written order, prohibit the departure of the person from Fiji.

(2) *A departure prohibition order remains in force until revoked, or set aside by a court.*

(3) *A departure prohibition order in respect of a person does not prevent the deportation of the person under the Immigration Act 2003.*

(4) *The Chief Executive Officer must, as soon as practicable after making a departure prohibition order in respect of a person-*

(a) *send a copy of the order to the person at the address of the person last known to the Board; and*

(b) *give a copy of the order, and such information as the Chief Executive Officer considers is likely to help facilitate the identification of the person, to the Permanent Secretary or the Director of the Department of Immigration.*

(5) *The Chief Executive Officer may give a copy of the order and information described in subsection (4)(b) to any other department of the civil service*

if, in the Chief Executive Officer's opinion, to do so will assist in giving effect to the order.

[15] There are three requirements under section 104(1) which must each be satisfied before FNPF is permitted to issue a DPO against the plaintiff, namely:

- i. The plaintiff must be liable to pay the outstanding FNPF contributions;
- ii. The FNPF contributions are due and payable but remain unpaid; and
- iii. The Chief Executive Officer of FNPF '*believes on reasonable grounds that it is desirable to prevent the [plaintiff] from departing from Fiji*' without fully satisfying the debt or making satisfactory arrangements to pay the debt.

[16] The onus is on FNPF to demonstrate that the DPO has been issued lawfully against the plaintiff, in that each of the three requirements were satisfied.⁴

Is the plaintiff personally liable to pay the contributions?

[17] FNPF claim that the plaintiff is personally liable as director of PSH to pay the unpaid contributions pursuant to section 116(2) and (3) of the FNPF Act, which reads:

(2) Every officer shall be personally liable for the payment of any mandated contributions, additional contributions or amounts due under the former law as contributions or surcharge if, while the amount remains unpaid, the officer-

(a) alienates, charges or disposed of any monies received or accrued in respect of which mandated contributions, additional contributions or amounts due under the former law as contributions or surcharge; or

⁴ See *Nair v FNPF* [2017] FJHC 736 (27 September 2017), at 12.

(b) disposed of or parts with any monies or funds belonging to the employer and in the possession of the officer.

(3) An officer shall not be personally liable under subsection (2) if he or she has no knowledge of, or was not aware of the existence of the unpaid mandated contributions, additional contributions or amounts due under the former law as contributions or surcharge.⁵

[18] An ‘officer’ is defined under section 116(4)(a) as including a director and chief executive officer of the company.

[19] The plaintiff is both the sole director and the chief executive officer of PSH. He is personally liable for the outstanding unpaid contributions under section 116 where the following circumstances are established:

- i. While the contributions remained unpaid, the plaintiff alienated or disposed of ‘*any monies received or accrued in respect of the*’ the unpaid contributions; and
- ii. The plaintiff had knowledge of or was aware of the existence of the unpaid contributions when he alienated or disposed of the said monies.

[20] FNPF argues that the plaintiff satisfies section 116(2) and (3). It claims that the plaintiff as sole director exerted a significant degree of control over the operations and affairs of PSH such that the plaintiff and PSH ‘*are so closely entwined that one cannot untangle them satisfactorily*’. These principles are derived from overseas cases considering a director’s tortious liability for the company’s conduct.⁶

[21] Having regard to PSH’s financial accounts for the 2023 and 2024 tax years, FNPF argues that because the company made a profit for the said two years it could have applied part of the profit toward the unpaid contributions but did not. In addition, the net profit was converted into

⁵ My emphasis.

⁶ The cases being, *Dicks v Hobson Swan Construction Ltd (in Liquidation) and Ors* [2006] NZHC 1657 & *Drouzhna v Wiseman & Anor* (2006) EWHC 2708.

shareholder equity directly benefiting the plaintiff and his fellow shareholders – FNPF claim that this equity transfer to the shareholders occurred at the time the financial statement was signed by the plaintiff (as director of PSH) on 27 June 2025 and, thus, the plaintiff was aware of the debt to FNPF when the transfer occurred. The result, FNPF argues, is that the plaintiff alienated or transferred the unpaid contribution monies in contravention of section 116(2) and had knowledge of the unpaid contributions at the time.

[22] The tortious liability of a director has no bearing on the application of the statutory test under section 116. Having considered the facts and evidence in this case, I am satisfied that FNPF has not demonstrated that the plaintiff comes within section 116(2) and (3). At the time of the alienation or disposal of company monies during the 2023 and 2024 tax years, the plaintiff could not have had knowledge or awareness of the alleged unpaid contributions. The unpaid monies did not arise as an issue until April 2025 (after the 2023 and 2024 tax years had ended) and the debt was not raised until 6 June 2025. It is a stretch to accept that the plaintiff (and the other shareholders of PSH) made decisions in late June 2025 on the treatment of PSH’s net profit for the 2024 year, influenced by FNPF’s notice earlier that same month. More likely, these financial decisions had already been made before receipt of FNPF’s notice.

[23] In any event, in order for FNPF to have any prospect of succeeding with these arguments regarding the financial affairs of PSH, it ought to have produced accounting evidence (or like evidence) to support the same. It did not.

[24] My finding that the plaintiff does not come within section 116, and, thus, is not personally liable to pay the alleged unpaid contributions for the locum doctors for PSH, is sufficient to dispose of the case. The plaintiff succeeds with its application and is entitled to the removal of the DPO. However, for completion, I will consider the two other requirements under section 104(1).

Is the contribution due and payable?

[25] Both parties provided arguments on whether the locum doctors are employees entitled to FNPF contributions. This issue, however, is the subject of separate proceedings in the High Court;

Civil Action No. HBC 301 of 2025. I am not prepared to address an issue which another court is required to determine.⁷ I am content to accept, for present purposes, that a debt has been raised by FNPF and remains due and payable.

Were there reasonable grounds for the CEO of FNPF to believe that it is desirable to prevent the plaintiff from departing Fiji?

[26] FNPF argue that the DPO was desirable because of the amount of the debt payable and the fact that the plaintiff has a residence visa in New Zealand. In short, FNPF claim that the plaintiff is a flight risk.

[27] This statutory requirement involves the exercise of a discretion by the CEO of FNPF. When exercising the discretion, the CEO must act fairly, responsibly and within the statutory parameters of the provision. It is no light matter to impose a DPO on an individual, effectively restricting their constitutional rights to freedom of movement out of Fiji.⁸ Amaratunga J offered the following helpful remarks in respect to the exercise of this discretion in *Nair v FNPF* (supra):

25. ***DPO is a serious restriction on the person's movements and this is more so when it relates to a foreign national as it would preclude a foreigner from returning to his domicile. Such a serious restriction on freedom of movement of a person should not be imposed as the first choice, even if that is allowed under the law, when it is relation to a debt, as in this case.***

26. ***Before resorting to such action, other avenues should be resorted to recover the alleged debt before placing a DPO on a person as action of last resort, when there is a 'flight risk' and other methods of recovery are bleak or impractical under the circumstances. DPO should not be used to punish a person unnecessarily, but used as a tool to be used when there is a reasonable***

⁷ Both counsel accepted during the hearing that I do not have jurisdiction to make any decision on liability as this issue is presently the subject of separate proceedings in the High Court.

⁸ Section 21 of the Constitution 2013.

likelihood of absconding, and or flight risk, etc. A steam roller should not be used for a peanut.

27. *The Plaintiff was constantly communicating with Defendant through emails regarding settlement of dues to the Defendant, and as a result of such communications had visited Fiji to put forward a payment proposal in early part of September, 2017. While these negotiations are going on, as far back as 24th July, 2017 a DPO was obtained and it was not revealed to the Plaintiff. When DPO was issued the COO was unaware of the intended payment proposal that Plaintiff would put forward for GEL and its viability and acceptance or rejection by the Board of the Defendant.*

28. *In my mind the action of Defendant to issue a DPO while communicating with the Plaintiff regarding payment proposals before such proposals were even submitted to the Board of the Defendant was unreasonable. At least the Plaintiff should be given an opportunity to forward his payment proposal, even if GEL is considered insolvent.⁹*

[28] I respectfully concur with the learned Judge's comments.

[29] Amaratunga J was critical in his judgment of the absence of any internal guidelines formulated by the CEO for the exercise of the discretion, noting at 32:

By the same token, no submission was made regarding any guidelines for issuance of DPO in FNPF Act 2011 or any regulations made under that. When such drastic power is vested in non-judicial authority some guideline or regulation is needed to avoid abuse of that power.

[30] The learned Judge found the guidelines used by Fiji Revenue and Customs Service for issuing its own DPO to be of value, as identified in *Herbert v FRCA* [2010] FJHC 265 (26 July 2010).

⁹ My emphasis.

In the earlier 2010 decision, Inoke J was considering a DPO issued by FRCA to the director of a company which had an unpaid tax liability. Inoke J stated:

[13] In this case it is not disputed that the company has a tax liability. How much is yet to be determined. However, whether the directors are liable is in issue. The other issue is whether the CEO had reasonable grounds that the Applicants would leave and not return without first paying the assessed tax or provide security for its payment, satisfactory to the CEO.

[14] In Clowes v Fiji Islands Revenue and Customs Authority [2009] FJHC 226; HBM029.2009L (14 October 2009), I said this of similar provisions in the previous tax legislation and the Customs Act:

[12] It is a very serious matter indeed that a person is stopped from moving freely within or out of Fiji. The Act has given the Comptroller wide powers under s 143C. But those powers cannot be abused. He may issue an order if he is satisfied that the person who owes the duty may leave without paying it or may leave without securing it. In other words, the person must owe duty and secondly he is a "flight risk". If any one of these two conditions are not satisfied then the Comptroller's power to issue the Order does not arise.

...

[15] In the unreported decision of Manoj Khera v Fiji Islands Revenue & Customs Authority [2006] FJHC; HBC 162 of 2006 (6 July 2006), Singh J had this to say about a DPO issued under the previous tax legislation and whether such a restraint is reasonable and justifiable in a free and democratic society:

A DPO may therefore be seen is akin to a statutory writ ne exeat civitate. The Commissioner can impose it without having to go to court. Obtaining a writ ne exeat civitate is cumbersome and time consuming. At times before the writ is issued some taxpayers abscond. A DPO is a quick and ready method of ensuring

that those who owe tax leave the country after paying tax. It provides for (an) effective remedy. As long as the Commissioner has good reason to believe that a taxpayer will abscond, he can issue a DPO. He cannot act arbitrarily or unreasonably. Factors like the amount of tax owed, whether a person has a citizenship elsewhere or a permanent residence or a business running in another country or whether other members of his family live in Fiji or elsewhere are all relevant factors.

...

[16] The Decree does not give any guidance as to what the CEO is to take into account in deciding whether to issue a DPO or not. Some guidance is given by Singh J in Manoj Khera above and I take further guidance from the Australian Tax Office (ATO) statement on the topic provided to me by Mr Koya which I find very helpful and respectively adopt:

INTRODUCTION

2. Part IVA of the Taxation Administration Act 1953 (TAA) gives the Commissioner the power to issue a departure prohibition order (DPO) which prohibits the debtor from leaving Australia, regardless of whether the debtor intends to return.

...

6. The critical phase in the making of an order is the process of determining whether there are 'reasonable grounds' which make it desirable to ensure the debtor does not depart from Australia without discharging or making arrangements satisfactory to the Commissioner to discharge the tax liability.

7. In deciding whether to issue a DPO, the Tax Office will take a number of factors into account including whether:

(i) there is a tax liability and whether it can be recovered

- (ii) known assets are sufficient to pay existing and future debts and whether those assets are in a readily-realizable form***
- (iii) recovery proceedings are in course***
- (iv) the debtor has recently disposed of assets to associated persons or entities (the transaction may be overturned in bankruptcy)***
- (v) there is any information to suggest concealment of assets (bank accounts in false names, use of an alias) or movement of funds...***
- (vi) the debtor has entered into transactions that 'charged' assets in [Fiji] and then moved the borrowed funds offshore***
- (vii) the debtor has assets overseas adequate to maintain a comfortable lifestyle***
- (viii) funds have been transferred overseas (and the purpose of the transfer)***
- (ix) the debtor has significant business interests in [Fiji]***
- (x) the debtor is subject to investigation for criminal activities (and whether any charges have been laid)***
- (xi) there is a threat against the debtor's life as a result of criminal or other activities***
- (xii) there is Tax Office audit activity (or similar activity from other Government agencies)***
- (xiii) the debtor holds (or the debtor has applied for) [a Fijian] or foreign passport/visa/work permit***

(xiv) the debtor has given an indication of likely overseas travel, and there is no apparent need for travel, and

(xv) the debtor's family situation (this information may not be relevant by itself, but when combined with a number of other factors, it may influence a decision to issue an order).

...

[17] I have not been pointed to any provision in the Decree which shifts the onus to the taxpayer of showing that a DPO is invalid. It might be impossible for the taxpayer to do that in many cases simply because the CEO does not fully explain why he issued the DPO. The onus of proof must lie with the CEO to show that he had reasonable grounds that the Applicants would abscond without paying or securing the tax liability.

[18] The first point that needs to be made is that it is the company that owes the tax. The company is still operating in Fiji and who is to say that it will not be able to pay its taxes. There is no evidence put forward by the CEO to say that the company is not able to do so. The CEO seems to base his decision simply and principally on his opinion that the tax he had already assessed is a substantial amount and that the company's assets are insufficient to meet the tax liability...¹⁰

[31] The size of the debt owed by PSH and the fact that the plaintiff is a resident overseas may, in certain circumstances, suffice to justify the issuing of a DPO. However, it does not suffice on the facts of the present case. The reasons, being:

- i. The debt was only raised in June 2025. The debt is relatively new despite the fact that the period in question is from 2021 to 2025.

¹⁰ My emphasis.

- ii. The debt is disputed by PSH and the company has taken positive steps, in a timely manner, to seek a determination of its liability.
- iii. On the other hand, FNPF has not availed itself of its own remedies, civil or criminal, to recover the debt. Instead, it has simply issued DPOs against all the shareholders of PSH.
- iv. There is no evidence that PSH is unable to pay the alleged debt. It has significant turnover each year and makes a substantial net profit from its operations.
- v. I do not overlook the fact that the plaintiff has a New Zealand residence visa and his family are residing in New Zealand. Balanced against that is the plaintiff's significant shareholding in PSH and his ownership of four properties in Fiji.
- vi. There is no evidence that PSH or the plaintiff is selling assets in order to leave Fiji.

[32] In short, there is no compelling evidence that the plaintiff is a genuine 'flight risk'.

Conclusion

[33] There are a couple of points which require mentioning. Firstly, the issuance of a DPO is not a debt collection tool. There are tools available to the defendant to recover unpaid contributions; as contained at sections 108 to 112 of the FNPF Act. The defendant has not exercised these remedies instead confining itself to issuing departure prohibition orders against the shareholders of the employer company, PSH. This, of itself, suggests that the defendant is using departure prohibition orders as a debt collection tool to place pressure on the shareholders to pay the alleged debt.

[34] Secondly, the statutory criteria required to be satisfied by the defendant under section 104 involves the CEO of FNPF being satisfied that there is real risk that the debtor will abscond and that it is, therefore, desirable to prevent the plaintiff from leaving Fiji. In 2017, Amaratunga J expressed concern that FNPF did not appear to then have any internal guidelines in place to assist the CEO with the decision whether to issue a DPO. It appears that almost 10 years later

there are still no internal guidelines in place - no evidence was produced in the present proceeding to suggest otherwise. Given the seriousness of such orders on individuals, and their families, in my view it is necessary that the defendant develop such internal guidelines, accessible to the public, to ensure transparency and consistency with the making of these orders – and, in doing so, providing confidence to the public with the integrity of the process of making departure prohibition orders.

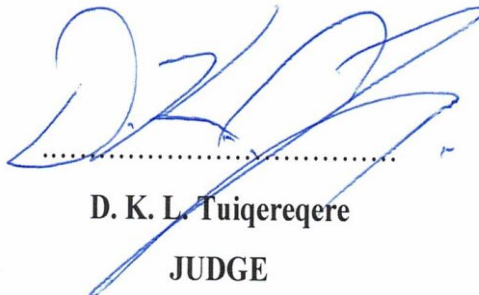
[35] In the present matter, I am not satisfied that the plaintiff is personally liable to pay the debt of PSH pursuant to s 116(2). Even if I am wrong, I am also not satisfied that the CEO of FNPF had a reasonable basis to believe that it is desirable to issue a DPO against the plaintiff.

Orders

[36] I make the following orders:

- i. The Departure Prohibition Order issued by the Chief Executive Officer of FNPF against the plaintiff on 23 July 2025 and 6 August 2025 must be removed immediately.
- ii. I award costs to the plaintiff summarily assessed in the amount of \$2,500.00 to be paid by the defendant within one (1) calendar month.




D. K. L. Tuiqereqere
JUDGE

Solicitors:

Nilesh Sharma Lawyers for the Plaintiff

Munro Leys for the Defendant