

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

Civil Action No: HBC 217 of 2019

**BETWEEN : KRISHNA SAMI NAIDU**  
**PLAINTIFF**

**AND : GULF INVESTMENT (FIJI) PTY LIMITED [IN  
LIQUIDATION]**  
**FIRST DEFENDANT**

**: VONSELA LIMITED**  
**SECOND DEFENDANT**

**: AVOSER LIMITED [IN LIQUIDATION]**  
**THIRD DEFENDANT**

**: ANANTH REDDY**  
**FOURTH DEFENDANT**

**: ~~WESTPAC BANKING CORPORATION~~ [ACTION  
STRUCK OUT ON 26 MAY 2025]**  
**~~FIFTH DEFENDANT~~**

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**APPEARANCES/REPRESENTATION**

**PLAINTIFFS : Ms. N. Narayan [R Patel Lawyers]**

**FIRST AND THIRD  
DEFENDANTS : Ms Henao with Mr T Ali [Attorney-General's Office]**

**SECOND AND FOURTH  
DEFENDANTS : No Appearance made [Not Represented]**

**RULING BY : Master Ms Vandhana Lal**

**DELIVERED ON : 17 November 2025**

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**INTERLOCUTORY RULING**  
[Leave to Continue Proceedings]

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## **Application**

1. The Plaintiff seeks leave to continue with legal proceedings against Gulf Investments (Fiji) Pty Limited and Avoser Limited.

## **Position of the companies and the liquidator.**

2. Both the companies are in liquidation and with the affairs under the control of the Official Receiver.
3. The Official Receiver has consented to the Plaintiff's application and states its role is limited to reporting on the companies' financial position and carrying out statutory duties under the companies Act. The Office of Solicitor General will continue to represent the companies in this proceeding.
4. The Official Receiver further informs that Gulf Investment as at 13 July 2017 was renamed to Denarau Waters Pte Limited.

Debt for Denarau Waters alone amounts to \$11,901,086.40.

Avoser Pte Limited has no assets remaining as the company was left without any property capable of being sold or distributed.

Gulf has a single asset (a parcel of land which has already being sub divided). The land is subject to registered mortgage in favor of Westpac Banking Corporation and unless it decides to sell the land, Official Receiver is unable to deal with it.

## **Statutory requirements and case laws**

5. Section 531 of the Companies Act provides:

*“when a winding up or order has been made or an interim liquidator has been appointed under Section 537, no action or*

*proceedings must be proceeded with or commenced against the Company, except by leave of the Court and subject to such terms as the Court may impose”.*

6. Section 531 prevents multiplicity of actions against a company which can be expensive, time consuming and potentially unnecessary.
7. Unless good reasons are shown, claims against a company in liquidation should be pursued by means of a proof of debt.
8. Manning J. in *Thompson v. Mulgoa Irrigation Company Limited* (1893) 4BC (NSW) 33 stated out the function (of Section 531) for then equivalent provision in Australian Law to be:

*“a company in liquidation is not to be harassed and its assets wasted by unnecessary litigation and the leave of the Court is therefore required as a safeguard. Before any action can be brought or continued against a company, the court must investigate the intended litigation.”*
9. The Plaintiff is required to demonstrate why leave should be granted.
10. The Australian case laws have outlined factors court can consider whilst exercising its discretion under S.531 and these are:
  - Whether there is a serious question to be tried;
  - Amount and seriousness of the case;
  - Degree of complexity of the legal and factual issues involved;
  - The stage to which the proceedings if already commenced may be progressed;
  - Did the Plaintiff delay in commencing or pursuing the claim.

- Whether a cross-claim arises out of the same factual matrix as the claims were to be the subject of a proof of debt;
- Whether the claim has arguable merit;
- Whether the proceedings are already in motion at the time of liquidation;
- Whether the proceedings will result in prejudice to the creditors;
- Will grant of leave unleash an “*avalanche of litigation*”;
- Whether the claim is in the nature of a test case for the interest of a large class of potential Claimants;
- Will cost of hearing be disproportionate to the Company’s resources.

**11.** Leave maybe granted with condition:

- May be granted to seek declaratory and injunctive relief only but not damages or an account of profits;
- How proceedings are to be conducted such as excusing the company in liquidation from nay obligation to file a defense or take part in future proceedings.

**12.** Courts have refused to grant leave in following cases:

- Lack of likely recovery of Plaintiff is successful - Rushleigh Services Pty Limited v Forge Company Limited (In Liquidation) (Receivers and Managers Appointed) [2016] FCA 1417;
- Claimant fails to adduce evidence demonstrating any seriousness or complexity to the Claim or existence of a serious dispute – Nu Life Air Conditioning Pty Limited v Reef Building Contractors Pty Limited [2006] NSW SC 1245;

- Where the Claimant asserts liability and sought a declaration of entitlement to be paid of a type provable in liquidation - *HP Mercantile Pty Limited v Australian Rural Group Limited (In Liquidation)* [2005] NSWSC 895;
- Where the Claim is too onerous on a liquidator even if it may not be capable of resolution by the lodging of a proof of debt - *Roots v Trussmasters Pty Limited* [2001] QSC 295;
- Where proceedings would dissipate funds otherwise available to the creditors in circumstances where the liquidators agreed to admit a proof of debt in the entire amount of the claim – *Rodgers v Schmierer* [2002] FCA 717.

**13.** The Plaintiff in his affidavit sworn on 17 February 2025 and filed on 21 February 2025 informs they have been advised by the Official Receiver’s office to apply for leave. He states that he has a substantial claim against the two companies, which claim commenced prior to the two entities being wound up.

**14.** The Plaintiff’s Claim can be summarized as follows:

*The Second Defendant Vonsela offered to purchase the Plaintiff’s share in Gulf and agreed to pay the Plaintiff AUD\$20,000,000 for the same.*

*The Deed of Release was between the Plaintiff and Vonsela.*

*Vonsela was required to stamp the transfer of shares.*

*A Personal Guarantee was signed by the Fourth Defendant Ananth Aviram Reddy.*

*Vonsela and Ananth breached their obligations being:*

- *Delay in stamping and registering the transfer of shares*
- *Non-payment of capital gain tax.*
- *Non-payment of money under the Deed of Release.*


15. The relief sought are against the Second and Fourth Defendants only.
16. Though the Plaintiff has described the Third Defendant Avoser as “*The Guarantor*” of the first part”, there is nothing in the statement of claim to state that the Third Defendant had given the Plaintiff a guarantee in any form.
17. Considering the above I find that leave ought to be granted to continue proceeding against the First Defendant Gulf Investment (Fiji) Pty Limited only as the Claim concerns transfer of shares in the First Defendant.
18. I find the Plaintiff has not convinced the court why the matter should be allowed to proceed against the Third Defendant as there is no reasonable cause pleaded against the Third Defendant Avoser in the statement of claim filed on 01 July 2019 nor in the proposed amended claim (annexure *KSN1* to the supplementary affidavit of Krishna Sami Naidu sworn on 10 July 2025 and filed on 11 July 2025).
19. There is lack of evidence demonstrating any serious issues for determination against Avoser.
20. Furthermore, there is lack of likely hood of recovery as the Official Receiver has informed that the company has no assets to sell or distribute to satisfy any judgments made against the company.

21. Hence leave is not granted to the Plaintiff to proceed with the claim against Avoser Limited [In Liquidation] the Third Defendant.

### Orders

22. Following orders are made on the Plaintiff's application dated 28 July 2025:

- i. Name of the First Defendant is amended to read as: Denarau Waters Pty Limited formerly known as Gulf Investments (Fiji) Pty Limited;
- ii. Leave is granted to the Plaintiff to continue with the legal proceeding against Denarau Waters Pty Limited;
- iii. Leave is refused to the Plaintiff to continue with the legal proceedings against Avoser Limited;
- iv. The Official Receiver will take a neutral role.
- v. Cost of the application to be in cause.

  
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Vandhana Lal [Ms]  
Master  
High Court  
At Suva.



17 November 2025

### TO:

1. **Suva High Court Civil Action HBC 217 of 2019;**
2. **R Patel Lawyers**, Solicitors for the Plaintiff;
3. **Office of the Attorney-General**, representing the Official Receiver for the First and Third Defendants;
4. **Vonsela Limited**, named Second Defendant;
5. **Ananth Aviram Reddy**, named Fourth Defendant.