

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 139 of 2017

BETWEEN : **MATRIX RISK MANAGEMENT LIMITED** a limited liability company having its registered office at Suva, Suva.

PLAINTIFF

AND : **ITESH SINGH** of Nadawa, Nasinu, occupation unknown to the Plaintiff.

FIRST DEFENDANT

AND : **ETUATE BAKANICOVA TALENIWESI** of Nawaka, Nadi, Operations Manager.

SECOND DEFENDANT

AND : **MATRIX GUARDS PTE LIMITED** a limited liability company having its registered office a Level 8 FNPF Place, Victoria Parade, Suva.

THIRD DEFENDANT

AND : **RICHARD JAGDISHWAR LAL** of 88 Navurevure Road, Tamavua, Suva, Businessman.

FOURTH DEFENDANT

AND : **LAWRENCE ROBERT** of 28 Vere Road, Laucala Beach Estate, Suva.

FIFTH DEFENDANT

Counsel : **Mr. A. Pal for the Plaintiff**
Ms. R. Lal for the Defendants
Date of Hearing : **7th May, 2018**
Date of Judgment : **22nd June, 2018**

JUDGMENT

INTRODUCTION

1. The Plaintiff filed this action against the Defendants and sought ex parte injunctive orders. The Plaintiff was granted injunctive orders ex parte and upon *inter partes* hearing of the said summons said orders were affirmed with a variation only in the explanation that allowed the Defendants to solicit any previous clients of the Plaintiff who had left

them prior to the termination of the services of 1st Defendant and also through open tenders. A notice of motion for committal was filed on 5.10.2017 and hearing was conducted on 7th May, 2018. The Plaintiff called two witnesses and Defendants did not call any witnesses.

2. Notice of Motion for injunction sought following orders

EX-PARTE NOTICE OF MOTION

- a. An order restraining the Defendants, their servants, agents, contractors, representatives or persons under the control, direction or guidance of the Defendants or howsoever from directly or indirectly canvassing, solicitor or dealing with, counseling, procuring, assisting another person to canvass, solicit or deal with any client of the Plaintiff. Client means any person or entity that was a client of the Plaintiff between September 2003 and 16 May 2017.
- b. An order restraining the Defendants, their servants, agents, contractor, representatives or persons under the control, direction or guidance of the Defendants or howsoever from directly or indirectly canvassing, solicitor or dealing with, counseling, procuring, assisting another person to canvass, solicit or deal with an employee, servant or agent of the Plaintiff to leave the employment of the Plaintiff or to join employment of the Defendants or any person or entity associated with the Defendants.
- c. An order restraining the First and Second Defendant, their servants, agents, contractor, representatives or person under the control, direction or guidance of the Defendants or howsoever from directly or indirectly using or disclosing any confidential information or intellectual property belonging to the Plaintiff to any other person other than for the purposes of complying with these orders.

Confidential information means all data, details, plans, designs, computer software, figures, financials, costings, developments, results, technical advice, trade secrets, samples, specifications, formulae, ideas, drawings, concepts, technology, intellectual property rights, documents, commercial knowledge, human resources information, marketing information, business information, Board Minutes, corporate records and any other proprietary information of the Plaintiff ("the Information") whether in documentary, visual, oral, machine-readable or other form together with all copies, extracts, samples, materials, equipment, media, inventions, computer hardware, videos, compact discs, CDs, CD-Roms or other items containing or referring to any of the information which is not in the public domain (except as a result of a failure to comply with an obligation to maintain confidentiality), irrespective of how it is known by the Defendants or in their possession.

Intellectual property means all inventions, improvements, designs, creations and other developments relating to or deriving from any of the business systems or technology used by the Plaintiff at any time during the Defendant's employment.

- d. An order that the Third Defendant be restrained from applying to the Security Industry Licensing and Registration Board for a security Licence under the Matrix Guards Pte Limited and or any other name which uses the word "Matrix" until further order of the Court.
 - e. An order that up to the final determination of this proceedings, or until further orders of this Court the Defendants are to keep account of all business conducted by the Defendants under the name of Matrix Guards Pte Limited or themselves.
3. Upon hearing of the Plaintiff's counsel ex parte orders in term from (a) to (d) above were are granted and after inter parte hearing following order was added

'Order (a) in the ex parte motion granted is varied with addition of further explanation that the Defendants are allowed to deal with any of the Plaintiff's clients including previous and existing clients if the offer of the Plaintiff was through an open tender(eg. Paper Advertisement) without dealing with one to one of the existing clients of the Plaintiffs. No restriction should be placed on the Defendants to deal with previous clients who had left them.(Previous clients means clients who were terminated prior to termination of 1st Defendant, hence the period from 2003 to 20017 stated in the ex-parte order, is further restricted to only clientele of the Plaintiff at time of the termination of the 1st Defendant)'

4. The grounds for seeking committal are as follows;

The Defendants breached the Orders of this Honourable Court made on 17 May 2017, the particulars of which are as follows:

- i. Itesh Singh on 15 June 2017 at around 11pm approached Satendra Singh, a security guard in the employment of the Plaintiff to join Itesh Singh and the Third Defendant in breach of the aforementioned Orders;
- ii. Secured Guards Pte Limited under the direction of its Drectors Richard Jagdishwar Lal and Lawrence Robert entered into contract with and provided security services to Comfort Home Furnishing Limited, a client of the Plaintiff who terminated its contract with the Plaintiff after the orders were made and such conduct of Secured Guards Pte Limited was in breach of the aforementioned Orders. The provision of services is confirmed in Affidavit of Robert Lawrence deposed on 22 June 2017 and is further confirmed by a letter dated 14 June 2017 from Comfort Home Furnishing Limited which is annexed to the affidavit of Lawrence Robert as annexure LR5.

- iii. Secured Guards Pte Limited under the direction of its Directors Richard Jagdishwar Lal and Lawrence Robert issued to Westin Resort & Spa (managed by Sheraton Overseas Management Corporation Limited) an Expression of Interest for the provision of security services via a document dated 23 May 2017. Sheraton Overseas Management Corporation Limited overseas operations of Sheraton Resorts and the Westin Resort and Spa on Denarau Island and is a client of Plaintiff. The actions of the Defendants were in breach of the aforementioned Orders.
 - iv. Secured Guards Pte Limited under the direction of its Directors Richard Jagdishwar Lal and Lawrence Robert provided security services to Foneology Solutions Limited, a client of the Plaintiff in breach of the aforementioned Orders. The EOI document dated 24 May 2017 issued to Westin Spa & Resort (managed by Sheraton Overseas Management Corporation Limited) admits to the same. The conduct of the Defendants were in breach of the aforementioned Orders.
 - v. Secured Guards Pte Limited under the direction of its Directors Richard Jagdishwar Lal and Lawrence Rober provided security services to Technix Pacific Limited, a client of the Plaintiff in breach of the aforementioned Orders. Such services were commenced in or around August 2017.
 - vi. Secured Guards Pte Limited under the direction of its Directors Richard Jagdishwar Lal and Lawrence Robert provided security services to Best Home Collection, a client of the Plaintiff in breach of the aforementioned Orders. Such services were commenced in or around 1 August 2017.
5. There were two witnesses called by the Plaintiff at the hearing of committal. The 1st witness relate to allegation contained in (i) above in paragraph. The first was a security officer who alleges that 1st Defendant had requested him to join his company. He said he had greeted 1st Defendant when he met and they talked for about 30 minutes and mainly about Plaintiff and why he was no longer with the Plaintiff. The witness said some allegations were made against an employee of the Plaintiff and the reason given for his leaving the employment was related to that employee. The witness said that in the said conversation the 1st Defendant had requested him to join his company. The witness in his cross examination said that he had given two statements to the Police but failed to produce a single statement to Police. What was marked as P1 is a statement he had made to Plaintiff. He did not explain why he had to make two statements as such an uncomplicated, simple incident of meeting a former superior and what transpired with him. There is a reasonable doubt as to the facts related.

6. According to the evidence 1st Defendant had accidentally met the witness and majority of the time was devoted to talk about the 1st Defendant's time with the Plaintiff and alleged incidents of the employees of the company. So, it is clear that 1st Defendant had met the witness as a former subordinate employee of the Plaintiff and their conversation was not centered on recruitment of the witness to another entity. The witness was not contacted by Defendant after the alleged incident. The fact that witness had made two complaints to the police and even on the second complaint certain omissions compared with his oral evidence indicate that he is not a reliable witness. Contempt of court is a serious offence and the burden of proof is with the party alleging the contempt. The Plaintiff had failed to establish contempt by the 1st Defendant solely on evidence of the said security officer. The standard of proof to be applied in a contempt proceedings in civil case is the criminal standard of proof.(see Dean v Dean, The Times, November 13, 1986, C.A)¹
7. The next witness for the Plaintiff was Operational Manager of a division of the Plaintiff and he produced a proposal of 3rd Defendant that was addressed to a previous client of the Plaintiff, but this was obtained from a present client of the Plaintiff. The witness could not state when the said proposal of the 3rd Defendant was submitted and more importantly when the said previous client left them. Without these vital components the document marked P5 cannot prove contempt of the orders of the court. The document P5 was obtained from not the party that it was directed and no evidence was available as to the circumstances as to how it was available to the Plaintiff's existing client who provided it to the operations manager.
8. The date of grant of ex parte injunction was 18th May, 2007. No evidence was produced at the hearing of the date of service of P5 and when it was forwarded to the named previous client of the Plaintiff. There was no evidence that said client was provided with services of the Plaintiff on or around the time 1st Defendant's services were terminated. So, there is no proof of contempt by Defendants through P5.
9. The witness also produced emails transpired between another former client who was engaged in sales of furniture (P7) and Plaintiff and their dissatisfaction of the Plaintiff's

¹ Supreme Court Practice(White Book) 1988 p 783 52/4/4


service and more specifically sleeping of the guards in the night. It is evidenced that all emails indicate said client was thoroughly dissatisfied with the Plaintiff's services and he was in fact requested by an employee of the Plaintiff to seek services from another entity. So the reason for their leaving the Plaintiff is not the actions of the Defendants, but repeated failure to meet the standard of the said client. Plaintiff had requested the said client to withdraw their services. So they are free to select any person including Defendants. P8 specifically states that they on their free will had selected the services of 3rd Defendant. P9 and P10 are also previous clients of the Plaintiff but there is no evidence of them being solicited or canvassed by the Defendants. The main component of the order (a) and (b) of the injunctive orders granted on 18.5.2017 relate to the 'direct or indirect canvass....' Or to incite another to canvass and there is no proof of such an act by the Defendants beyond reasonable doubt. So there is no proof of Defendants soliciting them in violation of court order. Again the Plaintiff had not met with the standard of proof required for committal.

10. The Plaintiff had failed to prove committal against Defendants, for reasons given.
11. So the Notice of Motion for committal is dismissed and cost is summarily assessed at \$2,000 to be paid within 21 days by the Plaintiff to the Defendants.

FINAL ORDERS

- a. The Notice of Motion seeking committal is struck off.
- b. Cost of this application is summarily assessed as \$2,000 to be paid within 21 days.

Dated at Suva this 22nd day of June, 2018


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Justice Deepthi Amaratunga
High Court, Suva