

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

**CIVIL JURISDICTION**

**Civil Action No. HBC 114 of 2021**

**BETWEEN**

**GUIZHOU ROAD & BRIDGE GROUP CO. LTD** a limited liability company

having its registered office at 44-46 High Street, Toorak, Suva.

**PLAINTIFF**

**AND**

**TUILOMA LALABALAVU** of 9 Miles, Nakasi, Fiji, Company Director.

**FIRST DEFENDANT**

**AND**

**HANSONS (FIJI) PTE LIMITED** a limited liability company having its

registered office at 8 Miles, Nasinu.

**SECOND DEFENDANT**

**Counsel** : Mr. Haniff F. for the Plaintiff  
1<sup>st</sup> Defendant in person  
Mr. Singh S. for the 2<sup>nd</sup> Defendant

**Date of hearing** : 10<sup>th</sup> June 2021

**Date of Order** : 17<sup>th</sup> June 2021

## **RULING**

(On the application for Stay)

- [1] The plaintiff instituted these proceedings seeking to recover damages for trespass to goods with interest and costs.
- [2] On 21<sup>st</sup> April 2021 the plaintiff filed an ex-parte summons, which was subsequently amended, pursuant to Order 29 rule 2(1),(2) and Order 29 rule 6 of the High Court Rules 1988 seeking the following orders:
1. That each of the defendants acting by and through their respective servants, employees and agents be restrained from interfering, removing and or otherwise disposing of any of the plaintiff's equipment/Machinery situated at Lot 1 on DP 4829 known as Wainabuku (Part of) in the Province of Naitasiri of State Lease No. 864611 in the premises occupied the defendants or each of them.
  2. That the defendants or each of them immediately deliver up equipment / machinery in the list attached to this summons to the plaintiff and/or alternatively;
  3. That the plaintiff be permitted to enter Lot 1 on DP 4829 known as Wainabuku (Part of) in the Province of Naitasiri of State Lease No. 864611 and remove its equipment / machinery in the list attached to the summons.
  4. That the Fiji Police Force ensure compliance by the first and second defendants with orders 2 and 3 above.

5. Such other and further relief and/or orders that this court deems appropriate.
6. Costs of this application be paid by the defendants or each of them on an indemnity basis.

[3] The court after hearing the plaintiff on 28<sup>th</sup> may 2021, granted the orders 2, 3 and 4 above. The 1<sup>st</sup> defendant filed an *ex-parte* application which was made *inter-partes* by the court, seeking the following orders:

1. The order of the Honourable Mr Justice Seneviratne issued on 2<sup>nd</sup> June 2021 be stayed and set aside until the final determination of this matter.
2. The plaintiff deliver up/or return al equipment / machinery to the 1<sup>st</sup> defendant taken or purports t have been taken by its agent on from property described as Lot 1 on DP4829 known as Waibuku (part of) in the attached list of this order with the assistance of the Police.
3. That the Police assist the 1<sup>st</sup> defendant as per order 2 and they must comply with the order 2 accordingly.

[4] When this matter came up before this court the learned counsel for the plaintiff and the second defendant informed that they do not wish to file affidavits in opposition and moved that the matter be heard. The court heard the counsel on the application for stay of the operation of the order made on 02<sup>nd</sup> June 2021. At the end of the hearing the 1<sup>st</sup> defendant was given time to file a supplementary affidavit. The plaintiff and the 2<sup>nd</sup> defendant were also granted leave to file their respective affidavits.

[5] In the affidavit in support of the 1<sup>st</sup> defendant, he admits that Chiba Motors of which he was the director has been wound up. In the affidavit in support the 1<sup>st</sup> defendant avers that he filed an application for leave to appeal and stay of the winding up order (ABU 018 of 2021) but on 24<sup>th</sup> May 2021 the Court of appeal refused the application. He states further that he filed a petition in the Supreme Court which is still pending. He tendered a copy of a petition addressed to the Supreme Court but there is no case number or stamp on the document. The moment any document is filed the registry puts the date stamp and the stamp showing that the fees has been paid. This is an undated copy signed by the 1<sup>st</sup> defendant. This does not show that he had in fact filed an application in the Supreme Court. Once a company is wound up only the liquidator has the power

to deal with the matters of the company. The 1<sup>st</sup> defendant is therefore, not entitled to deal with the properties of the company.

- [6] The 1<sup>st</sup> defendant states that the plaintiff has to pay money for parking its vehicles on the land under an agreement entered into between them. The 2<sup>nd</sup> defendant's position is that it never authorised the 1<sup>st</sup> defendant to enter into a lease with a third party. Even if he had the authority, the said agreement does not make provision for the 1<sup>st</sup> defendant to have a lien over the machinery of the plaintiff.
- [7] On 03<sup>rd</sup> April 2020 the plaintiff entered into an agreement of lease in respect of the property with the 2<sup>nd</sup> defendant for a term of one year. The machinery of the plaintiff are parked on the land under the said agreement.
- [8] The plaintiff alleges that the 1<sup>st</sup> defendant has sold an excavator belonging to the plaintiff which in my view is illegal.
- [9] It is clear from the above that the 1<sup>st</sup> defendant has no power or authority to hold on to the machinery of the plaintiff.

#### **ORDERS**

1. The application to stay the orders made by this court on 02<sup>nd</sup> June 2021 directing the 1<sup>st</sup> defendant to deliver up equipment/machinery in the list attached to the summons to the plaintiff, is refused.
2. Costs will be in the cause.



Lyone Seneviratne

**JUDGE**

17<sup>th</sup> June 2021

