



# JUDGMENT

- [1] The Plaintiff seeks urgent injunctive relief by way of an ex-parte summons. In effect, the Plaintiff seeks orders restraining the Second Defendant, Ms Rosy Reddy, from instructing new solicitors to represent her in a proceeding currently afoot in the Suva High Court.

## *Background*

- [2] The material facts are disclosed in the pleadings filed by the Plaintiff on 5 December 2023. Mr Isireli Fa, the Plaintiff in this proceeding, attests to the correctness of the content of the pleadings in an affidavit executed on 4 December 2023. A number of documents are annexed to the affidavit.
- [3] The Plaintiff's claim pertains to separate proceedings commenced in the Suva High Court in 2011, namely, **Rosy Reddy v Yanktesh Reddy & 6 ors; Civil Action No 13 of 2011** (the 2011 proceeding).
- [4] In December 2017, the Plaintiff and Ms Reddy signed a Legal Services Fee Agreement (the 2017 Retainer Agreement) setting out the terms of the arrangement between the two parties in respect to the Plaintiff's representation of Ms Reddy not only in respect to the 2011 proceeding but also 2012 and 2014 proceedings involving Ms Reddy; the 2017 Retainer Agreement is annexure A to Mr Fa's affidavit. The scope of the Plaintiff's services are expressed as taking the 2011 proceeding '*to a determination by the High Court and/or to a settlement*'. The obligations of both parties are set out therein as are the Plaintiff's hourly rates.
- [5] Clause 6.1 of the 2017 Retainer Agreement provides that Ms Reddy agrees to pay '*a fixed fee of 10% of any judgment sum or settlement sum payable to the Plaintiff*' for its services in respect to the 2011 proceeding '*or in accordance with its hourly rates set out*' in the agreement '*whichever is higher*' plus VAT. Ms Reddy authorized the Plaintiff to deduct its legal fees from any monies payable.
- [6] Clause 8.1 permits Ms Reddy to discharge the Plaintiff '*at any time*.' If this occurs Ms Reddy is liable for '*all unpaid charges*'. Where the matter is yet to be concluded '*the*

*Firm's fees payable at the time of conclusion shall be calculated in accordance with the Firm's current hourly rates' set out in the agreement.*

[7] On 30 November 2023, the solicitors for the defendants in the 2011 proceeding wrote to the Plaintiff to advise that the defendants were agreeable to settling that proceeding by payment to Ms Reddy in the amount of FJD\$11,000,000.00. The solicitors advised that if the offer was acceptable to Ms Reddy the solicitors would prepare a Deed of Settlement. By way of a letter of the same date, the Plaintiff responded confirming Ms Reddy's acceptance of the offer and sought a draft Deed of Settlement for consideration.

[8] There followed several email communications between the Plaintiff and Ms Reddy on the morning of 1 December 2023 regarding the settlement. Ms Reddy sought details of the Plaintiff's calculation of its fees to avoid delay of the settlement. Ms Reddy noted that she was liable to either 10% plus VAT of the settlement sum or the hourly rates whichever is higher. The Plaintiff responded that once the settlement was finalized it would calculate the invoice. Ms Reddy, however, requested a swift calculation after the Deed of Settlement was signed to avoid any disagreement. To which the Plaintiff responded, that he was unable to provide such details due to '2 hearings next week'. These email communications all occurred within an hour.

[9] There followed an email from Ms Reddy an hour later advising, inter alia:

*You will be paid based on your final invoice provided the final amount fairly reflects the work you and overseas counsel have done for us.*

*Because of the way you have responded and we do not know what your final invoice is, we have decided to instruct another law firm to complete the settlement for us.*

*Please finalise your invoice whenever it is ready for our consideration.*

*We reserve the right to seek itemized particulars of the total cost (if billed on hourly basis) should the total invoice exceed 10% of the settlement sum + 15% VAT which is \$1.37m.*

*I am sorry we have to take this step to protect ourselves.*

[10] The Plaintiff responded by email several minutes later that Ms Reddy was in breach of their agreement and that proceedings would be filed by the Plaintiff.

[11] On 4 December 2023, Sherani and Co, the Third Defendant in the present proceeding, filed a Notice of Change of Solicitors for Ms Reddy in the 2011 proceeding.

*Application for urgent injunctive relief*

[12] The present proceedings were filed on 5 December 2023 by way of a Writ of Summons and Statement of Claim. The claim is brought against seven defendants, including, inter alia, Ms Reddy, Sherani and Co (the Third Defendant) as well as the defendants and their solicitors in the 2011 proceeding. The Plaintiff claims that Ms Reddy, Sherani & Co and the First Defendant, Shailendra Raju, have acted in breach of the 2017 Retainer Agreement, that there has been a breach of contract and unlawful interference, deceptive and misleading conduct, unconscionable conduct and conspiracy to defraud by unlawful means by the said defendants.

[13] The Plaintiff seeks by way of relief:

1. *An order for specific performance of the Retainer Agreement between the Plaintiff and the 2<sup>nd</sup> Defendant of 27.12.17.*
2. *A declaration that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant has unlawfully interfered with the Plaintiff's retainer Agreement with his client dated 27.12.17 with the intent to cause loss and damage to the Plaintiff and his Client.*
3. *A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> defendant had engaged in Deceptive and Misleading Conduct contrary to section 75 of the Fijian Competition and Consumer Commission Act 2010 against the Plaintiff and his Client.*
4. *A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> defendant had engaged in unconscionable conduct contrary to section 76 of the Fijian Competition and Consumer Commission Act 2010 against the Plaintiff and his client.*
5. *A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> defendant conspired to defraud by unlawful means together with the 2<sup>nd</sup>-5<sup>th</sup> defendants against the Plaintiff and his client.*
6. *An injunction against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, their servants, agents, whomsoever and whatsoever, from interfering with the Plaintiffs Retainer Agreement with his client dated 27.12.17, in any manner or form.*
7. *General Damages against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants.*

8. *Exemplary damages against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants in the sum of \$1,000,000.00 [One Million Dollars].*
9. *An injunction against the 1<sup>st</sup>-7<sup>th</sup> defendants, their servants, or agents whomsoever and whatsoever from dealing with another law firm in Fiji or abroad or with any 3<sup>rd</sup> parties in any matters whatsoever that relates to the Plaintiffs Retainer Agreement with his client dated 27.12.17 and representation concerning the Plaintiff's client in **Rosy Reddy v Yanktesh Permal Reddy & 6 Ors; Civil Action No HBC 133 of 2011.***
10. *Costs of this action.*
11. *Any other relief this Honorable Court deems just.*

[14] By way of a separate Ex-Parte Summons, also filed on 5 December 2023, the Plaintiff seeks four orders, namely:

- i. An injunction restraining the 1<sup>st</sup>-3<sup>rd</sup> defendants, their servants or agents, whomsoever and whatsoever, from interfering in any manner or form whatsoever with the Plaintiffs 2017 Retainer Agreement with the 2<sup>nd</sup> defendant until full and final determination of this matter.
- ii. An injunction against the 3<sup>rd</sup> defendant, its servants or agents, whomsoever and whatsoever, restraining them from acting for the 2<sup>nd</sup> defendant in **Rosy Reddy v Yanktesh Permal Reddy & 6 Ors; Civil Action No HBC 133 of 2011** until a final determination of this matter.
- iii. An injunction restraining the 1<sup>st</sup>-2<sup>nd</sup> defendants, their servants or agents, whomsoever and whatsoever, from being involved in any manner or form, directly or indirectly in any negotiations concerning the settlement of the 2011 proceeding and/or filing any documents in that proceeding.
- iv. An injunction against the 4<sup>th</sup>-7<sup>th</sup> defendants restraining them from engaging in any settlement talks or discussions in any manner or form with the 1<sup>st</sup> and 2<sup>nd</sup> defendants in respect to the 2011 proceeding or accepting any Notice of Change of Solicitors in respect to the 2011 proceeding.

*Hearing of application for injunction*

[15] I heard from Mr Fa on 5 December in respect to the Ex-Parte application. Mr. Fa provided the following arguments in support:

- i. As to whether the 2017 Retainer Agreement precluded Ms. Reddy from terminating her instructions of the Plaintiff, Mr Fa conceded that it did not but nevertheless argued that Ms Reddy was seeking to circumvent the Agreement. He expressed alarm at the conduct and behavior of Ms Reddy. He questioned her truthfulness and argued that the behavior of Ms Reddy, Sherani and Co and Mr Raju was a major issue in the current proceeding. Mr Fa stated that the Plaintiff deserved credit for 11 years of its representation of Ms Reddy.
- ii. Mr Fa further argued that such conduct was circumventing the Plaintiff's legal fees and that the Plaintiff was seeking specific performance to allow the Plaintiff to complete their instructions for Ms Reddy as per the 2017 Retainer Agreement. Mr Fa agreed that what was left for the Plaintiff to complete was payment of the settlement monies, deduction of the plaintiff's legal fees and then payment of the outstanding amount to Ms. Reddy. It also appears that the Deed of Settlement still requires finalization between the parties in the 2011 proceeding.
- iii. Mr Fa stated that if this Court did not grant the injunctive relief sought this would in effect destroy the Plaintiff's 2017 Retainer Agreement.
- iv. Mr Fa was asked whether the Plaintiff was concerned that Ms Reddy would not comply with her obligation to pay the Plaintiffs fees in accordance with the 2017 Retainer Agreement and, if so, why the Plaintiff has not sought injunctive relief to protect this position. Mr Fa confirmed that the Plaintiff was concerned with this prospect. However, I note that the injunctive orders as framed do not reflect this. Mr Fa stated that the Plaintiff had decided to seek wider injunctive orders instead. Mr Fa was unable to put a figure on the amount that the Plaintiff says that Ms Reddy is liable to pay under the 2017 Retainer Agreement.
- v. Mr Fa stated that if the injunction was not made lawyers fees and retainer agreements would be meaningless. He stated that the matter was urgent and if orders were granted it would compel the defendants to disclose their positions.

*Legislation and legal principles*

[16] The Plaintiff's application is made under Order 29 Rule 1 of the High Court Rules 1988. The Rule reads:

- (1) *An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in the party's writ, originating summons, counterclaim or third party notice, as the case may be.*
- (2) *Where the applicant is the plaintiff and the case is one of urgency and the delay caused by proceeding in the ordinary way would entail irreparable or serious mischief such application may be made ex parte on affidavit but except as aforesaid such application must be made by notice of motion or summons.*
- (3) *The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.*

[17] The law is settled on where the Court may make an order for an interim injunction.

[18] Pathik J provided a helpful summary of the principles and authorities in **Korovulavula & Anor v Fiji Development Bank** [1997] FJHC 197. The High Court was considering whether to extend or dissolve an injunction already granted. His Lordship stated:

*The principles to be followed in considering the granting of injunctive relief are set out in the leading case of AMERICAN CYANAMID CO. v ETHICON LTD (1975) A.C. 396. The House of Lords there decided that in all cases, the Court must determine the matter on a balance of convenience, there being no rule that an applicant must establish a prima facie case. The extent of the court's duty in considering an interlocutory injunction is to be satisfied that the claim is "not frivolous or vexatious", in other words, "that there is a serious question to be tried".*

*In CYANAMID (supra) at page 406 LORD DIPLOCK stated the object of the interlocutory injunction thus:*

***"... to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of***

*the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where "the balance of convenience" lies".*

*(emphasis mine)*

*A similar view was expressed by McCARTHY P in NORTHERN DRIVERS UNION v KUWAU ISLAND FERRIES (1974) 2 NZLR 61 when he said:*

*"The purpose of an interim injunction is to preserve the status quo until the dispute has been disposed of on a full hearing. That being the position, it is not necessary that the Court should have to find a case which would entitle the applicant to relief in all events: it is quite sufficient if it finds one which shows that there is a substantial question to be investigated and that matters ought to be preserved in status quo until the essential dispute can be finally resolved ... "*

*(ibid, 620)*

*"It is always a matter of discretion, and ... the Court will take into consideration the balance of convenience to the parties and the nature of the injury which the defendant, on the one hand, would suffer if the injunction was granted ... and that which the plaintiff, on the other hand, might sustain if the injunction was refused ..."* *(ibid, 621).*

...

*As to "balance of convenience" the court should first consider whether if the Plaintiffs succeed at the trial, they would be adequately compensated by damages for any loss caused by the refusal to grant an interlocutory injunction.*

...

*In HUBBARD v VOSPER (1972) 2 WLR 359, LORD DENNING at p.396 gave some guidance on the principles of granting an injunction which I think is pertinent to bear in mind in this case when he said:*

*"In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the*



*strength of the claim but also to the strength of the defence, and, then, decide what is best to be done. Sometimes, it is best to grant an injunction so as to maintain the status quo until the trial. At other times, it is best not to impose a restraint upon the defendant but leave him free to go ahead. For instance in Fraser v Evans [1969] 1 QB 349, although the plaintiff owned the copyright, we did not grant an injunction because the defendant might have a defence of fair dealing. The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules."*

[19] These same principles have been consistently applied up to the present time. In **Alizes Ltd v Commissioner of Police** [2013] FJHC 596, Tuilevuka J noted:

11. *Interim injunctions are a powerful discretionary remedy. But they are not lightly granted. They are granted ex parte only if there is urgency. In other words, if to proceed normally (i.e. inter partes by Notice of Motion or Summons) would be a delay entailing irreparable or serious mischief, (see Order 29 Rule 1(2) as amended in 1991 in LN 61/91).*
12. *The applicant must show a strong enough case to justify the Court not hearing the other side's case. Usually, to show "urgency", the applicant must show that, unless the court intervenes with a restraining order, he has a legal right in the subject-matter of the case which is under an immediate threat of being violated. Apart from that, the applicant must convince the court that the balance of convenience favours the granting of the injunction ex-parte.*

[20] Balapatabendi J succinctly identified the test as follows in **Vanualevu Muslim League v Hotel North Pole & Ors** [2013] NZHC 151, at 17.4:

*What could be deduced from Lord Diplock's rulings in American Cyanamide Case are in fact tests to be adopted in dealing with an application for interim injunction. The tests could be summarized as follows:-*

1. *Is there a serious question to be tried?*
2. *Is damages an adequate remedy?*
3. *Where does the balance of convenience lie?*

*Is there a serious question to be tried?*

[21] The orders sought by the Plaintiff are to restrain Ms Reddy from instructing new counsel, Sherani & Co, to represent her on the 2011 proceeding. The Plaintiff relies on the 2017 Retainer Agreement but on the face of it this agreement does, in fact, permit Ms Reddy to terminate her instructions of the Plaintiff (and, thus, instruct new solicitors). As such, in my view there is not a serious question to be tried.

*Is damages an adequate remedy?*

[22] If the Plaintiff succeeded at trial would the Plaintiff be adequately compensated by damages for any loss caused by the refusal to grant the interlocutory application? The answer clearly must be in the affirmative. It is the remedy which is expressly anticipated for such a situation in the 2017 Retainer Agreement.

[23] If the Plaintiff is genuinely concerned that it will not receive payment of its fees from the settlement monies then the injunctive orders sought by the Plaintiff ought to have been framed as such. They are not.

[24] Moreover, given the settlement is identified as involving payment of FJD\$11,000,000.00 to Ms Reddy there certainly appears to be sufficient funds available for Ms Reddy to pay the Plaintiff's fees, further supporting the view that damages is an adequate remedy in the present proceeding.

*Where does the balance of convenience lie?*

[25] The balance does not lie in compelling Ms Reddy to continue to instruct the Plaintiff on her 2011 proceeding. Quite apart from whether there is a legal basis for making such an order it would be entirely impractical. A solicitor client relationship cannot operate properly or effectively without trust between the client and their solicitor. The evidence available at the present time demonstrates that there is little, if any, trust between the Plaintiff and Ms Reddy. This is clear from the Plaintiff's pleadings and Mr Fa's arguments at the hearing. It is also apparent from the emails from Ms Reddy to Mr Fa on 1 December 2023, annexed to Mr Fa's affidavit.

*Conclusion*

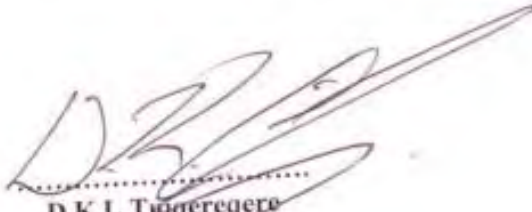
[26] I have carefully considered the Plaintiff's pleadings, its Ex-Parte Summons and the supporting affidavit along with Mr Fa's arguments. I consider that this is a case in which

the appropriate remedy is not an interlocutory injunction but an award of damages (in the event that the Plaintiff is successful with its claim against the defendants) and the defendants, in particular, Ms Reddy, would be in a financial position to pay such damages. The affidavit evidence does not support the Plaintiff's application for injunctive relief as framed in the Ex-Parte Summons.

[27] The Plaintiff's disappointment with the termination of its instructions by Ms Reddy is understandable. It appears, on the face of it, that the Plaintiff has done all the heavy lifting and secured a settlement for their client. But, the Plaintiff's remedy is payment of its fees, ie damages, as expressly envisaged in the 2017 Retainer Agreement.

[28] I see no proper basis to make the orders sought in the Plaintiff's Ex-Parte summons and, accordingly, the application is dismissed.



  
D.K.L Tuiqereqere  
Judge

At Suva this 8<sup>th</sup> day of December, 2023.

**Solicitors:**

**To: Fa & Company**