

IN THE HIGH COURT OF FIJI  
(WESTERN DIVISION) AT LAUTOKA  
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 301 OF 2022

**BETWEEN** : **KERRY WILLIAM O'HANLON**  
**PLAINTIFF**

**AND** : **ROMA RESHMI CHAND**  
**1<sup>ST</sup> DEFENDANT**

**AND** : **FIRST DREAM TEAM PTE LIMITED**  
**2<sup>ND</sup> DEFENDANT**

**AND** : **LAND TRANSPORT AUTHORITY**  
**1<sup>ST</sup> NOMINAL DEFENDANT**

**AND** : **THE ATTORNEY GENERAL'S OFFICE OF FIJI**  
**2<sup>ND</sup> NOMINAL DEFENDANT**

**AND** : **THE REGISTRAR OF COMPANIES**  
**3<sup>RD</sup> NOMINAL DEFENDANT**

**BEFORE** : Hon. Mr. Justice Mohamed Mackie

**APPEARANCES** : Mr. Lutumailagi, for the Plaintiff  
Ms. Singh, for the 1<sup>st</sup> Defendant  
Ms. Tikoinaiyau, for the 2<sup>nd</sup> Defendant  
Mr. Kant, for the Nominal Defendant

**DATE OF SUBMISSION:** 8<sup>th</sup> November 2023, filed by the Plaintiff  
8<sup>th</sup> November 2023, filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Nominal Defendants  
19<sup>th</sup> December 2023, filed by the 1<sup>st</sup> Defendant

**DATE OF JUDGMENT :** 25<sup>th</sup> March 2024

**RULING**

(On application for injunction)

**A. INTRODUCTION:**

1. The Plaintiff commenced this action by way of his Writ of Summons and the Statement of Claim (SOC) filed on 11<sup>th</sup> November 2022, together with an Ex-Parte Notice of Motion

supported by an Affidavit sworn by him on 10<sup>th</sup> November 2022, which accompanied annexures marked from “KWO-1” to “KWO-21”.

2. As per the prayers to the Ex- Parte Notice of Motion, the Plaintiff has moved, *inter alia*, for the following injunctive reliefs;

- a) *That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and /or her servants and/or agents be restrained from charging or encumbering or transferring damaging or modifying the portion/ part/or whole of the **Toyota Corolla HO 419, Datsun Utility CE352, the Company First Dream Team Pte Limited and the three business Timber Kings, First Café & Carwash and Curry in a Hurry and all its assets.***
- b) *That the 1st and 2nd Defendants and /or her servants and/or agents be restrained from any way proceeding with any act of process whereby they alienate the portion/ part/or whole of the **Toyota Corolla HO 419, Datsun Utility CE352 , the Company First Dream Team Pte Limited and the three business Timber Kings, First Café & Carwash and Curry in a Hurry** and all its assets to any party until the final determination of the proceedings.*
- c) *That the 1st and 2nd Defendants and /or her servants and/or agents be restrained from any way proceeding with any act of process whereby they alienate the portion/ part/or whole of the **Toyota Corolla HO 419, Datsun Utility CE352, the Company First Dream Team Pte Limited and the three business Timber Kings, First Café & Carwash and Curry in a Hurry** and all its assets to any party until the final determination of the proceedings.*

3. As per the prayers to the Amended SOC filed on 15<sup>th</sup> December 2022, the Plaintiff, in addition to the aforesaid 3 injunctive reliefs in prayers a),b) & c), has moved for the following substantial reliefs;

- a) ..
- b) ...
- c) ...
- d) *The 1<sup>st</sup> and 2<sup>nd</sup> Defendants to execute all documents and transfer to the Plaintiff the Toyota Corolla registration number HO419 , Datsun Utility registration number CE 352 , the Company First Dream Team pte Limited and three business Timber Kings, First Café & Carwash and Curry in a Hurry and all its assets.*
- e) *Judgment against the 1<sup>st</sup> Defendant for **\$176,506.55(One Hundred Seventy- Six Thousand Five Hundred Sixty Dollars and Sixty-Five Cents)***
- f) *Damages.*

4. Accordingly, when the Ex-Parte Notice of Motion for injunctive reliefs was supported before me on 11<sup>th</sup> November 2022 by the Plaintiff’s Counsel, this Court, being convinced on the existence of serious questions to be tried on the face of it, granted temporary injunction orders as prayed for, but only against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, to be in force till 25<sup>th</sup> November 2022.

5. However, the Court desisted from making any injunctive orders against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Nominal Defendants, as no substantial reliefs had been prayed for against them.

**B. BACKGROUND FACTS IN BRIEF:**

6. The Plaintiff is an Australia Citizen, who had developed a friendship with the 1<sup>st</sup> Defendant in Fiji via social media, and he came to Fiji as a Tourist on 15<sup>th</sup> July 2022. The Plaintiff's position is that he, having arrived at Fiji as aforesaid, was waiting for his Residence permit, of which the 1<sup>st</sup> Defendant claims ignorance.
7. As per the 1<sup>st</sup> Defendant, the Plaintiff and she were in a de-facto relationship, and he was living with her and her daughter in a rented house at paka paka road, Navoci, Nadi, of which the rental arrears was cleared by the plaintiff voluntarily owing to the love and affection he had towards her and her daughter, while she had never asked him to do so. The Plaintiff's position is that he was only occupying a room there on friendship basis as he wanted to avoid high Hotel charges, on an arrangement whereby they could assist each other out and help each other's business to grow.
8. They later moved to another rented house located at Ridgeview Estate, Vatualevu, Nadi. The Plaintiff's stance is that with his intention to start a business in Fiji and through an understanding made with the 1<sup>st</sup> Defendant, he remitted funds from his Australian Bank Account to the 1<sup>st</sup> Defendant's Bank Account in Fiji a total sum of \$209,506.65 as evidenced by "KWO-2" to "KWO-4".
9. The initial expenses in setting up of the Company and purchasing of assets for the business were met by the funds so remitted. The 1<sup>st</sup> Defendant registered the 2<sup>nd</sup> Defendant Company and 3 other businesses, namely, Timber Kings, First Café & Carwash and Curry in a Hurry with the 3<sup>rd</sup> Nominal defendant, which occurred during the period from 5<sup>th</sup> to 20<sup>th</sup> September, 2022 as evidenced by "KWO-5" to "KWO-8".
10. The 1<sup>st</sup> Defendant on the instruction of the Plaintiff, purchased 2 Motor Vehicles described above utilizing the funds in her Account as evidenced by annexures "KWO-9" and "KWO-10" and one of it was registered in the 1<sup>st</sup> Defendant's name, while the other one was registered in the name of the 2<sup>nd</sup> Defendant Company.
11. Misunderstanding arose between them over the amount of withdrawal by the 1<sup>st</sup> Defendant from her account for the settlement of the purchase prices for Cars, and other sums withdrawn, allegedly, for her own use. Disputes also aroused over the usage and retention of the 1<sup>st</sup> Defendant's Motor Car bearing No-EK 688 (Honda) by the Plaintiff.
12. According to the Plaintiff, the parties had agreed for the 1<sup>st</sup> Defendant to transfer the Company, the businesses and the said two Vehicles unto the Plaintiff's name and for the Plaintiff not to proceed with any further claim against the 1<sup>st</sup> Defendant. The Plaintiff

alleges, that the 1<sup>st</sup> Defendant did not honor the agreement and indicated to the Plaintiff and others that she would sell the two vehicles, the Company, businesses and the assets.

13. Now the Plaintiff claims from the 1<sup>st</sup> defendant a total sum of \$176506.55 as shown in paragraph 22 of the SOC, the aforesaid two Vehicles, the Company and its 3 businesses, with the other assets thereof. He also claims damages and costs on indemnity basis.

**C. HEARING OF NOTICE OF MOTION (Inter partes)**

14. For the consideration of the injunctive reliefs sought by the plaintiff, the followings are before this Court.
  - a. The Ex-parte Notice of Motion filed on 11<sup>th</sup> November 2022 seeking injunctive reliefs.
  - b. Affidavit in support sworn by the Plaintiff **KERRY WILLIAM O'HANLON** on 10<sup>th</sup> November 2022 and filed on 11<sup>th</sup> November 2022, together with annexures marked as "**KWO-1**" to "**KWO-21**"
  - c. The Orders granted on 11<sup>th</sup> November 2022 sealed and filed on 14<sup>th</sup> November 2022.
  - d. Amended Writ of Summons and the Statement of Claim filed on 15<sup>th</sup> December 2022.
  - e. 1<sup>st</sup> Defendant's Statement of Defence to the Amended Statement of Claim, filed on 23<sup>rd</sup> February 2023.
  - f. Affidavit in opposition by the 1<sup>st</sup> Defendant - Roma Reshmi Chand, sworn and filed on 23<sup>rd</sup> February 2023, with no annexures.
  - g. Affidavit in response sworn by **Shavleen Prasad** on 20<sup>th</sup> February 2023 and filed on 27<sup>th</sup> February 2023 along with annexures "SP-1" to "SP-13 on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Nominal Defendants.
  - h. Reply by the Plaintiff filed on 17<sup>th</sup> March 2023 to 1<sup>st</sup> Defendant's Statement of Defence.
  - i. Affidavit in reply sworn by the Plaintiff **Kerry William O'Hanlon** on 28<sup>th</sup> March 2023.
  - j. The written submission filed on behalf of the Plaintiff, the 1<sup>st</sup> defendant and 2<sup>nd</sup> and 3<sup>rd</sup> Nominal Defendants. The 1<sup>st</sup> named Nominal Defendant LTA has not filed any Affidavit in response or Statement of Defence and has stayed away from Court.
15. When the matter came up for inter-partes oral hearing, counsel for all the parties agreed to have the Application disposed by way of written submissions, instead of oral hearing,

and accordingly all parties, except for the 1<sup>st</sup> named Nominal Defendant - Land Transport Authority, have filed their respective written submissions.

**D. LAW & PRINCIPLES ON INJUNCTION:**

16. The Application is made pursuant to Order 29, r.1 (1) of the High Court Rules 1988, as amended ('HCR') which spells out that:

*'1. -(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 that party's writ, originating summons, counterclaim or third party notice, as the case may be.'*

17. The governing principles applicable when considering an application for interim injunction were laid down in the leading case of ***American Cyanamid Co v Ethicon Ltd [1975] UKHL 1; (1975) AC. 396*** as follows:

*(1) A serious question to be tried;  
(2) Inadequacy of damages;  
(3) The balance of convenience;  
(4) Special cases.*

**E. DISCUSSION & DETERMINATION:**

**Subject Matter**

18. The subject matter or the bone of contention in this matter, according to the Plaintiff is comprised of 2 Motor Vehicles ie **Toyota Corona bearing Registration number HO 419** presently registered in the 1<sup>st</sup> Defendant's name, **Datsun Utility bearing Registration number CE 352**, registered in the 2<sup>nd</sup> Defendant's name, the Company called "**First Dream Team pvt Limited**", businesses, namely, "**Timber King**", "**First Café & Carwash**" and "**Curry in a Hurry**" and all its assets. The 1<sup>st</sup> Defendant adds into this and claim a Motor Vehicle (Honda) bearing registration number EK 688 registered in her name, which is, admittedly, in the possession of the Plaintiff.

**The Question to be decided**

19. The 1<sup>st</sup> Defendant is seeking to have the temporary injunction orders granted in her absence dissolved, and to have the Application for injunctive orders dismissed. The question to be decided by the court for the time being is whether the plaintiff is entitled to interim injunction orders as prayed for until the determination of the substantial matter. If, I decide that the plaintiff is not entitled for such an interim injunction, I would dissolve the temporary injunctive orders already granted in favour of the plaintiff and dismiss the Summons for the same.

20. For that purpose, I will examine the relevant law, the principles applicable to the granting of interim injunctions and the facts placed before me by way of Affidavit evidence of both the parties and the contents of the written submissions.

(1) **Whether there is a serious question to be tried?**

21. Lord Diplock in his judgment at page 408 also said;

*“... it would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.*

***Kerr LJ in Cambridge Nutrition Ltd v BBC [1990] 3 All ER 523 at 534 said:***

*“It is important to bear in mind that the American Cyanamid case contains no principle of universal application. The only such principle is the statutory power of the court to grant injunctions when it is just and convenient to do so. The American Cyanamid case is no more than a set of useful guidelines, which apply in many cases. It must never be used as a rule of thumb, let alone as a straitjacket.... The American Cyanamid case provides an authoritative and most helpful approach to cases where the function of the court in relation to the grant or refusal of interim injunctions is to hold the balance as justly as possible in situations where the substantial issues between the parties can only be resolved by a trial”.*

22. From the above it is absolutely clear that the court is not bound to follow decision in ***American Cyanamid v Ethicon Ltd (supra)*** in granting or refusing an application for injunction and it will entirely depend on the discretion of the court. Injunction is an equitable remedy granted at the discretion of the court and the court can, of course, always be guided by the guide lines laid down in previous decisions.

23. The main purpose of granting an interlocutory injunction is to maintain the status quo until the final determination of the substantive matter.

24. In *Hubbard & Another v Vosper & Another [ 1972] 2 Q.B. 84* Lord Denning 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 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. .... 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.*

25. In the absence of an interim injunction, Parties can have an expedited or speedy trial which would include attending to all pre-trial matters on an expedited basis and which would meet ends of justice.

26. **Lord Diplock in American Cyanamid case (supra) said** (in page 407 H):

*"It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial"*

27. On careful perusal of the Affidavits evidence adduced by the parties, the contents of the Amended SOC, SOD, and the reply thereto and those of the written submissions filed on behalf of the parties, for the following reasons, this court stands convinced that there is no any serious question to be raised at the trial of this matter.

28. As far as the subject matter of this action, alluded to in paragraph 18 above, is concerned, I find that it has now boiled down to 2 Motor Vehicles only, the first one registered in the 1<sup>st</sup> Defendant's name and the 2<sup>nd</sup> one registered in the 2<sup>nd</sup> Defendant Company's name. The 3<sup>rd</sup> vehicle registered in the name of the 1<sup>st</sup> Defendant, presently retained by the Plaintiff, does not fall under the assets claimed by the Plaintiff as per his SOC.

29. The substantial part of the subject matter, according to the Plaintiff, was the 2<sup>nd</sup> Defendant Company, 3 business ventures, the other assets thereof , which included the said two Motor Vehicles as well, admittedly, purchased utilizing the funds remitted by the Plaintiff unto the 1<sup>st</sup> Defendant. The total purchase value of those 2 vehicles is only \$18,000.00 (\$9,000.00 each).

30. As per the revelation by the 2<sup>nd</sup> and 3<sup>rd</sup> Nominal Defendants, the said Company and all 3 business ventures , having ceased to operate, have now been deregistered and the Registrations thereof have been cancelled and it has been published in the gazette as well. These facts are not disputed by the Plaintiff.

31. Except for the said two Motor Cars, the other subject matter of litigation , namely, the 2<sup>nd</sup> Defendant Company, 3 business ventures and the, so-called, other assets of the said Company and business ventures have now become invisible. The Plaintiff, in his pleadings, except for mentioning the said Motor cars, has not specifically named and/or itemized any such other assets owned by the 2<sup>nd</sup> Defendant company or other business ventures.

32. Apart from claiming the 2 Motor Cars and other, purported, assets of the Company and its 3 business ventures as per paragraph ( a ) of the prayers to the SOC, the Plaintiff in paragraph (b) thereof also moves for a judgment in a sum of \$176,506.55, which includes the \$18,000.00 being the total purchase price of both Cars and a further sum of

\$14,000.00, being the total of (\$ 10,000.00+\$1,000.00+ \$1,000.00 + \$2,000.00), allegedly, obtained by the 1<sup>st</sup> defendant by deceit as averred in paragraph 22 of the amended SOC.

33. The Plaintiff in his SOC or in the other pleadings (Affidavits) does not specifically state as to how the 1<sup>st</sup> defendant withdrew and utilized for her own use the balance sum of **\$144,506.55** (ie **\$176, 506.55 minus \$18,000.00 and \$14,000.00 = \$144, 505.55**), particularly, when the Plaintiff also said to have used the ATM card of the 1<sup>st</sup> Defendant, by obtaining the same and the PIN number thereof from her.
34. The 2<sup>nd</sup> defendant Company and the 3 businesses under it, registered in September 2022, have ceased operations in November 2022. No evidence before the Court to the effect that the 2<sup>nd</sup> Defendant Company and the businesses under it were gainfully operated by the 1<sup>st</sup> Defendant for the Plaintiff to make claim on it. As no objection was shown in relation to the notice of deregistration published in the gazette on 30<sup>th</sup> November 2022, the Company now stands deregistered.
35. What appear to be remaining as the assets are only two Motor vehicles, admittedly, purchased by the 1<sup>st</sup> Defendant on the instruction of the Plaintiff for \$18,000.00 by utilizing the funds remitted to her by the Plaintiff. I don't consider an injunction order should be in place when there is no any serious question in this regard to be tried at the trial.
36. The absence of any serious question is very clear and conspicuous when the Counsel for the 1<sup>st</sup> Defendant states that the whole matter could be settled by returning two disputed vehicles to the Plaintiff, provided he returns the Honda vehicle EK 688 unto 1<sup>st</sup> Defendant in the same condition it was when he took possession of it.
37. The substantial reliefs claimed by the Plaintiff in terms of paragraphs (d) and (c) of the prayer to his amended SOC can be remedied by way of monetary award, if the Plaintiff becomes victorious at the end. There is no necessity at all to have an injunction order in place to preserve the status quo in this action. The Plaintiff in fact has prayed for damages in paragraph (f) to the prayer. Nowhere in his pleadings, the Plaintiff states that the damages would not be an adequate remedy and irreparable loss will result in the absence of an injunctive order till the end of the matter.
38. In view of the above, I don't find that the balance of convenience should favor the Plaintiff. The main tussle between the Plaintiff and the 1<sup>st</sup> Defendant appear to be in relation to 3 Vehicles, two of which are with the 1<sup>st</sup> Defendant, being the subject matter of this action and the 3<sup>rd</sup> one which is with the Plaintiff, not being a part of the assets claimed by the Plaintiff. The exchange of the vehicles between them would, in my view, pave the way for the settlement of the dispute once and for all and avoid the protracted litigation at the expense of time and money.




39. Therefore, the orders made on 11<sup>th</sup> November 2022 granting temporary injunction as per paragraphs (a) and (b) of the Ex-parte Notice of Motion should be discontinued and the Application for interim injunctive orders should be rejected.
40. Considering the circumstances, no orders for cost is made in favor of the 1<sup>st</sup> Defendant. However, it is justifiable to order the Plaintiff to pay the 2<sup>nd</sup> and 3<sup>rd</sup> Nominal Defendants \$250.00 (Fijian) each totaling to \$500.00 as they have wasted the time and resources.

**F. FINAL ORDERS:**

- a) The Ex-parte Notice of Motion filed by the Plaintiffs on 11<sup>th</sup> November 2022, seeking injunctive orders against the Defendants, is hereby dismissed.
- b) The temporary injunction orders made on 11<sup>th</sup> November 2022 against the 1<sup>st</sup> and 2<sup>nd</sup> Defendant on ex-parte basis are hereby discontinued.
- c) The Plaintiff shall pay \$250.00 each unto the 2<sup>nd</sup> and 3<sup>rd</sup> nominal Defendants as summarily assessed costs within 28 days from today.
- d) No costs ordered in favor of the 1<sup>st</sup> Defendant and she shall bear her own costs.



  
A.M. Mohamed Mackie-  
Judge

At High Court Lautoka this 25<sup>th</sup> day of March, 2024.

**SOLICITORS:**

**For the Plaintiffs:**

**For the 1st Defendant:**

**For the 2<sup>nd</sup> & 3<sup>rd</sup> Nominal Defendants:**

**Messrs. ACE Legal - Barristers & Solicitors**

**Messrs. Janend Sharma Lawyers- Barristers & Solicitors**

**Office of Attorney-General.**