

**IN THE HIGH COURT OF FIJI AT SUVA**  
**ADMIRALTY JURISDICTION**  
**AN ACTION IN REM AND IN PERSONAM**

Civil Action No. HBG 03 of 2022

**BETWEEN** : **ZHENG NIANYUAN** of Lot 22 Kavu Place, Salato Road, Namadi Heights, Suva, Fiji,  
Domestic Duties  
**FIRST PLAINTIFF**

**AND** : **CHANGFENG ZHOU & SHU CHAO FENG** currently of Suva, Fiji, Crew Members.  
**SECOND PLAINTIFF**

**AND** : **FIJI REVENUE AND CUSTOMS SERVICES.**  
**THIRD PLAINTIFF**

**AND** : **WESTERN MARINE PTE LIMITED** a limited liability company having its registered  
office at Walu Bay, Fiji.  
**FOURTH PLAINTIFF/APPLICANT**

**AND** : **FIJI PORTS CORPORATION LIMITED.**  
**FIFTH PLAINTIFF**

**AND** : **THE FISHING VESSEL SHUN JHAN 188.**  
**1<sup>ST</sup> DEFENDANT (In Rem)**

**AND** : **SHUN JHAN FISHERY CO. LIMITED.**  
**2<sup>ND</sup> DEFENDANT**

**BEFORE:** **Hon. Justice Vishwa Datt Sharma**

**COUNSEL:** **Ms. Maharaj K. for the Plaintiffs**

**Mr. Kumar A. for the fifth Plaintiff**

**Mr. Nandan S. for the 4<sup>th</sup> Plaintiff/Applicant**

**DATE OF DECISION:** **05 March, 2025**

**DECISION**

*[Removal of items from First Defendant and Ancillary Orders]*

On the outset, it is noted from the file records that the Second Plaintiff's wholly discontinued this Action against the Defendants.

It is also essential to note that the Court granted the order for the arrest of the vessel "**Shun Jhan 188**" by the Admiralty Marshal, which was subsequently arrested and is anchored at the Fiji Ports Corporation Ltd at Suva Kings Wharf.

The vessel Shun Jhan 188 was advertised for tender and the Admiralty Marshal has received only one tender for the sale of the vessel which is impending determination.

#### **A. Introduction**

1. The **Fourth Plaintiff, Western Marine Pte Limited** had filed a Summons coupled with an Affidavit in Support on 08<sup>th</sup> March 2023 and sought for the following orders:
  - A. That prior to the sale of the First Defendant, the Fourth Plaintiff be permitted to remove from the First Defendant at the Fourth Plaintiff's cost, the Fourth Plaintiff's items that the Fourth Plaintiff supplied to the Defendants and that still remain on the First Defendant;
  - B. That there be no sale of the First Defendant until the Fourth Plaintiff's items have been removed from the First Defendant and or the said items not be included in any sale of the First Defendant;
  - C. That the First Defendant remain within the jurisdiction of the honourable court until the determination of this application;
  - D. That the First Plaintiff and the Defendants do all things, deeds, and acts necessary to give effect to such removal including but not limited to giving the Fourth Plaintiff access to the First Defendant;
  - E. That Fourth Plaintiff file an affidavit into court providing a complete list of all items removed from the First Defendant within seven days of such removal.

#### **In the alternative:**

- F. That the First Plaintiff not accept any offers for sale of the First Defendant without the written consent of the Fourth Plaintiff's solicitors;
- G. That the costs of this application be costs in the cause.
- H. That any further or other orders that the Court deems meet.

2. The First Plaintiff and the Fourth Plaintiffs are strongly opposing the Fourth Plaintiff's application seeking for the orders therein as enumerated at paragraph 1 of my Decision hereinabove.

#### **Fourth Plaintiff's/Applicant's Contention**

3. The Second Defendant, [Shun Jhan Fishery Co. Limited] entered into a written contract [ML1] with the Fourth Plaintiff [Western Marine Pte Limited] on 30th October 2021 wherein the Fourth Plaintiff agreed to remove the existing fishing equipment and supply and install one (1) new set of Jessn Hydraulic long line fishing equipment with piping and accessories to the First Defendant [The Fishing Vessel Shun Jhan 188] owned by the Second Defendant, Shun Jhan Fishery Co. Limited for an agreed sum of \$131,000.
4. The Second Defendant, Shun Jhan Fishery Co. Limited acknowledged owing the Fourth Plaintiff, Western Marine Pte Limited a sum of \$76,833.45 for supply and services rendered and sum owing as at the end of September 2021.
5. All items supplied and installed under the contract was subject to **Romalpa clauses** or retention of title clauses under the invoices issued by the Fourth Plaintiff to the Second Defendant.
6. The Defendants now owe the Fourth Plaintiff \$303,906.93 for items supplied, installation and services including Fishing Lines and other items which the Defendants have failed to pay for.
7. The Fourth Plaintiff is entitled to remove the items supplied and installed by it at the Defendant's costs which remain installed on the First Defendant before the sale of the First defendant [the Fishing Vessel Shun Jhan 188].
8. In the Alternative, the Forth Plaintiff is entitled to the monies owed to it from the proceeds of the sale of the vessel, Shun Jhan 188, to recover losses suffered by the Fourth Plaintiff.

#### **Fifth Plaintiff's Contention**

9. Strongly opposes the Fourth Plaintiff's application.
10. The Fishing vessel, Shun Jhan 188, had been advertised for Sale by Tender and one (1) tender has been received by the Admiralty Marshall in the sum of FJD \$80,000 with the consumable onboard and the fishing equipment's affixed /installed to the said vessel.
11. Previously, the First Plaintiff's solicitors had secured a buyer for USD \$120,000, the Sale did not proceed because the best possible value was not obtained by the Tender and the vessel was then valued at USD \$205,000.
12. The vessel, Shun Jhan 188, continues to remain under arrest in connection with claims made by the Plaintiff's and is due for Sale.

### First Plaintiff's Contention

13. The Plaintiff was the Captain of vessel Shun Jhan 188 and this **Admiralty Action** was instituted by the First Plaintiff to recover a claim of unpaid salary of USD \$70,000.
14. On 3 May 2022, the Court ordered for the arrest and safe custody of the Admiralty Marshall until further orders of the Court.
15. Default Judgment was entered against the First Defendant in the sum of USD \$70,000 for the payment of outstanding salary owed to the First Plaintiff.
16. Court also granted orders for Sale of Vessel, Shun Jhan 188 by Tender.
17. Intervenes Second Plaintiff to Fifth Plaintiff subsequently filed their claims in the within action.
18. Second Plaintiff - Changfeng Zhou & Shu Chao Feng withdrew their claim against the First Plaintiff on 19 September 2024.

### Determination

19. The Substantive issue that this Court now needs to determine is:

"Whether prior to the sale of the Fishing Vessel, **Shun Jhan 188** [First Defendant], **Western Marine Pte Limited** [Fourth Plaintiff] be permitted to remove from the **First Defendant** at the **Fourth Plaintiff's** costs, the **Fourth Plaintiff's** items that the **Fourth Plaintiff** supplied to the Defendants and that still remain on the First Defendant, the Fishing Vessel, Shun Jhan 188 "asserting ownership of the items on a basis of a supposed **Romalpa**, or **retention title**, clause within a supply and service contract dated as 30 October 2021?"
20. It must before borne in mind that any fixture, fittings, adding, installing and/or implanting any additional items to the original structure, a property will be recognized as one item e.g. House built on a land is a fixture to land.
21. This Admiralty Marshal Action was filed on 27 April 2022 by the Plaintiff, Zheng Nianyuan against the Fishing Vessel Shun Jhan 188 [First Defendant] and Shun Jhan Fishery Co. Limited [Second Defendant] seeking for an order for the Arrest and sale of vessel '**Shun Jhan 188**'. Damages and/or in the alternative payment of unpaid salary of USD \$70,000. The Second to Fifth Plaintiff's subsequently joined in as Interveners to claim their debt.
22. Judgment by default was entered against the First Defendant on 30 August 2022 in favour of the First Plaintiff in the sum of USD \$70,000 and orders for sale of vessel by Tender was also granted by the Court in order to ensure the disposition of the then substantive matter.
23. However, before this matter could proceed any further for its hearing and disposition, the Fourth Plaintiff intervened and sought for orders on Order 34 Summons for Directions and Removal of the items supplied and installed to the vessel 'Shun Jhan 188' by it at the

Defendant's costs before the sale of the vessel '**Shun Jhan 188**' [First Defendant] and recover losses and monies owed in the sum of \$303,906.93.

24. The Fourth Plaintiffs' Contention is that the absence of full payment for the items justifies and entitles them to remove the items from the vessel, contending that the ownership over the supplied items remain with them due to the purported **ROMALPA** Clause.
25. Upon perusal of the **Supply and Service Contract**, I am unable to ascertain that there exists a **ROMALPA** Clause or equivalent **retention of title provision** in the said Agreement.
26. The absence of **Romalpa** clause in the contract has significant legal implications. A retention of title provision must be expressly agreed upon between the parties to the contract to establish a supplier's ongoing ownership of goods after delivery where payment is not fully made.
27. In absence of above clauses, **the default presumption under contractual law is that the Title to the goods transfers to the buyer upon completion of supply and installation.**
28. **Failure by the Fourth Plaintiff to secure a specific clause to retain ownership in contract, the items supplied and installed on the vessel 'Shun Jhan 188' became a fixture and the property of the vessel owner, Shun Jhan Fishery Co. Limited upon installation. Hence, integrating into the vessel as fixtures.**
29. The Fourth Plaintiff therefore does not have a legal foundation and/or standing to claim for these items since the Fourth Plaintiff doesn't have any proprietary right over goods that are now part of the fishing vessel, Shun Jhan 188.
30. The absence of the **Romalpa Clause** or an agreement retaining title from the contract:
  - **Firstly** - reinforces the principle that these fixtures are now the property of the vessel owner, Shun Jhan Fishery Co. Limited [Second Defendant].
  - **Secondly**, the rights of the Fourth Plaintiff are limited to recovering any unpaid monies under the supply and service contract, rather than asserting any ownership over the good supplied.
31. Therefore, **lack of any proprietary interest of the Fourth Plaintiff** will only entitle him to **monetary remedies** [Debt Claim] for unpaid debts rather than proprietary claims over goods already installed.
32. The Fourth Plaintiff becomes responsible to prove its debt and once proven, the appropriate remedy lies in satisfying the debt through proceeds from the Sale of the vessel, Shun Jhan 188.
33. The order for the Removal of Fixtures as sought for by the Fourth Plaintiff will not only be inconsistent with **contractual and property principles** but would also be **inequitable** to other parties and intervenors' with vested interests in the vessel 'Shun Jhan 188'.
34. The **principle of equitable distribution** among creditors mandates that claims are **prioritized** according to a **specific order**, ensuring fair treatment of all claimants.

35. Whilst permitting to allow the Fourth Plaintiff to remove the items from the vessel 'Shun Jhan 188' would improperly disrupt the **priority structure** granting them an undue advantage over other creditors who also have claims against the vessel '**Shun Jhan 188**'.
36. Not only that, allowing the Fourth Plaintiff to circumvent their contractual limitations would set a bad precedent, suggesting that parties to the proceedings may unilaterally claim ownership in the absence of an **agreed – upon title retention clause**. Such a precedent will **undermine contractual certainty**, disrupting the commercial expectations of contracting parties.
37. It is therefore just and fair and in the best interest of all parties to the proceedings that I uphold the established **order of priority** allowing the Fourth Plaintiff to recover any outstanding debts/claims only through **monetary compensation** after the **sale of the fishing vessel 'Shun Jhan 188'** either by private sale and/or tender accordingly.

### **In Conclusion**

38. The absence of the **ROMALPA or retention of Title** clause in the **supply and service contract date 30 October 2021** limits the Fourth Plaintiffs' entitlement to monetary remedies only and any outstanding debt should be addressed through the proceeds from the sale of the vessel 'Shun Jhan 188' subject to the established 'order of priority' either by private sale and/or by tender.
39. That the First Defendant Fishing Vessel 'Shun Jhan 188' continue to remain within the Fiji Jurisdiction of the Honourable Court until the finalization and determination of this matter.
40. Remaining orders sought in the Fourth Plaintiffs' summons filed on 8 March 2023 and not acceded to and accordingly dismissed.
41. The matter to proceed with the sale of the Fishing Vessel 'Shun Jhan 188' and proceeds of sale be distributed and/or paid to the parties entitled to their claim upon prove of their respective claim in monetary terms.

### **Costs**

42. Although the matter was heard by way of written submissions and Affidavit Evidence there will be no order as to costs against the Fourth Plaintiff at the discretion on this Court.

### **Orders**

43. That the First Defendant, Fishing Vessel 'Shun Jhan 188' to remain within the Fijian Jurisdiction of this Honourable Court and not to be interfered and intermeddled with until further orders of this court.
44. Remaining orders sought on the summons of the Fourth Plaintiff dated 08 March 2023 is hereby dismissed.

45. the parties to move this court by an application seeking an order for the finalization of the Admiralty Action by way of calling/ Advertising one tender each in the daily newspapers - the Fiji Times and 'Fiji Sun' and allow the Court to distribute the entitlement of proceeds of sales accordingly.
46. There will be no order as to costs against the Fourth Plaintiff at this stage of the proceedings at the discretion of this Court.

Dated at Suva this 05<sup>th</sup> day of March ,2025.



VISHWA DATT SHARMA  
PUISNE JUDGE

cc. Capital Legal, Suva  
Patel Sharma Lawyers, Suva  
Reddy & Nandan, Suva