

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

**HBC 278 OF 2023**

**BETWEEN:**            **RYLESTONE PTE LIMITED** a limited liability Company having its registered office at C/- Fiji National Provident Fund, Investment Division, 33 Ellery Street, Suva.

**PLAINTIFF**

**A N D:**                **DREL LTD** a duly registered public company limited by guarantee having its registered office at Unit 018 Port Denarau Retail & Commercial Center, Port Denarau, Nadi, Fiji.

**DEFENDANT**

Appearances:            Mr. Krishna S. for the Plaintiff  
                                 Mr. Padarath N. for the Defendants

Date of Hearing:           19 April 2024

Date of Ruling:           01 April 2025

**R U L I N G**

1. Before me is a Summons filed by Messrs. Krishna & Company on 28 February seeking leave to discontinue and/or withdraw the Writ of Summons and Statement of Claim which was filed on 14 December 2023.
2. The Summons is filed pursuant to Order 21 Rule 3 of the High Court Rules 1988. It is supported by an affidavit of Ratu Isoa Taukeiqarainavo Makutu sworn on 23 February 2024.
3. Ratu Isoa is the Company Secretary of Rylestone Pte Limited, the plaintiff company. He deposes as follows at paragraphs 5 and 6:
  5. *The plaintiff has decided to withdraw the substantive proceedings for this matter as it is not commercially viable to proceed with the matter in Court thus our request to discontinue this matter.*
  6. *There is no prejudice to the defendants as the defendants solicitors did not file any court pleadings in this matter except the Notice of Appointment of Solicitors.*

4. The defendant company has filed an affidavit of Ms. Leanne Fong sworn on 21 March 2024 in opposition to the Summons. Fong is the Company Secretary for DREL Ltd, the defendant company. She deposes that DREL has suffered prejudice. An ex-parte injunction which the plaintiff company had obtained on 14 December 2023 resulted in Denarau Corporation Limited being restrained from holding an AGM which had been scheduled on the afternoon of the same day. The plaintiff abused the court's process to obtain the *ex-parte* injunction because their main purpose was to stop the AGM and to thwart the passing of some special resolutions on the Agenda and to instead, push its own agenda for some other special resolutions.
  
5. Both parties have filed written submissions. Below I summarise the main principles from the cases cited by both counsel:
  1. *the court has a discretion as to whether or not to grant leave to a plaintiff to discontinue an action.*
  2. *where an oral application is being made (without any formal application) – even with the consent of the defendant, the court may still refuse leave (**Patel v Kant** [2016] FJHC 788; HBC 16.2011 (5 September 2016)).*
  3. *a plaintiff who wishes to withdraw a case merely because he or she or it has realized “that the chances of success” had diminished – should not easily be granted leave purely on that consideration (**Fiji Medical Council v Sachida Nand Mudaliar** (2009) FLR 368.*

*“The principle...is that after proceedings have reached a certain stage, the plaintiff, who has brought his adversary into court, shall not be able to escape by a side door and avoid the contest. He is no longer dominus litis, and it is for the judge to say whether the action shall be discontinued and upon what terms” (**Fox v Star Newspaper** (1898) 1 Q. B 636).*
  4. *however – a plaintiff cannot be compelled to litigate or continue litigation against his will (**Fiji Medical Council v Sachida Nand Mudaliar**).*
  5. *leave will usually be granted provided that no injustice will be caused to the defendant (**Fiji Medical Council v Sachida Nand Mudaliar**).*
  6. *a defendant must show prejudice caused to him or her or it.*
  7. *usually – the court will assess prejudice by looking at documents filed by the defendant (e.g. Acknowledgement of Service, Statement of Defence, Affidavits filed in the substantive matter and/or in all interlocutory processes filed.*
  8. *based on its assessment (as per 7 above), the Court will then “redress” the prejudice to the defendant by an appropriate award of costs.*
  9. *“in considering costs...the Court is entitled to consider whether the discontinuing Plaintiff had “an arguable case” against the Defendant. In other words, does the application to discontinue reflect a surrender by the Plaintiff in a hopeless case. It is also relevant to consider the conduct of both parties before the proceedings were commenced, in commencing the proceedings and in the termination of the proceedings.” (**Fiji Medical Council v Sachida Nand Mudaliar**); **Tamani v Kokomo Resort Ltd** [2023] FJHC 827; HBC143.2022 (2 November 2023))*

10. *flowing from the above, in considering the conduct of the parties before the commencement of proceedings, and the termination of proceedings - the court may look at such factors as: what communication had happened between the parties leading up to the filing of the Writ of Summons and Statement of Claim and whether or not there was some ulterior motive in the subsequent filing of these proceedings.*

6. I take into account the following:

1. *the main purpose of the ex-parte injunction was to stop the AGM in question from proceeding.*
2. *the defendant has not filed any statement of defence.*
3. *the ex-parte injunction was granted on 14 December 2023. Four days later, on 18 December 2023, the plaintiff filed its Notice of Discontinuance.*
4. *the only documents which the defendant has filed are:*
  - (i) *the Notice of Appointment of Solicitor filed on 15 December 2023.*
  - (ii) *the affidavit in reply (to the application for ex-parte injunction) filed on 24 March 2024.*

7. The affidavit of Leanne Fong highlights the communication that had been happening between the parties leading up to the filing of the Writ of Summons and the Statement of Defence. I accept Mr. Padarath's submission that the Writ of Summons and Statement of Claim filed, and the timing of the Notice of Discontinuance four days later even before the defendant has filed any document, would tend to suggest strongly that the originating process and the *ex-parte* injunctions were filed in order to thwart without good cause the AGM which was scheduled on 14 December 2023. I have no doubt that the defendant would have incurred costs by instructing its solicitors – even though it had only filed a Notice of Appointment at the time the Notice of Discontinuance was filed.

8. In the circumstances, I grant leave to the plaintiff on its Notice of Discontinuance pursuant to Order 21 Rule 3 of the High Court Rules 1988 with costs to the defendant which I summarily assess at \$3,000 (three thousand dollars only).



Anare Tuilevuka  
JUDGE

01 April 2025