

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 210 of 2025

BETWEEN: **RAJESHNI GITA SONI KUMAR aka RAJNESHNI GITA KUMAR** of
29 Orchards Road, Fairfield, New South Wales 2165, Australia,
Unemployed.

Plaintiff

AND: **RAJESH KUMAR** trading as SONIK TRUCKING SUPPLIES, a registered
business name at Nadi Back Road, Nadi, Fiji and currently operating
from Nakasi, Nausori, Fiji.

Defendant

JUDGMENT

For the Applicant: *Ms. Chand K.*

For the Respondent: *NP*

Date of Hearing: *17th June 2025*

Date of Ruling: *18th June 2025*

Introduction

1. The Plaintiff and the Defendant reside in Australia. They were married but divorced in the Federal Circuit and Family Court of Australia on the 20th of July 2024. Following the divorce, the parties engaged in mediation on 24th April 2025 to resolve the division of the matrimonial property. During the mediation, the Defendant agreed to transfer to his wife full control and beneficial ownership of Sonic Trucking Supplies, a sole trader business registered and operating in Fiji in recognition of the Plaintiff's non-financial contribution during the marriage and as part of the overall settlement.
2. There has been no formal order as yet of the Family Court of Australia regarding the settlement and there is no signed settlement agreement between the parties to show exactly what they have agreed to.

The Application

3. The Plaintiff filed an Ex-Parte summons with an affidavit in support sworn on the 13th of June and filed in this court on 16th of June 2025 seeking interim injunctions to:

- a. Restrict the Defendant through himself or through his servants or agents or otherwise from selling, transferring, removing, disposing, or otherwise dealing with the stocks, assets, equipment, bank accounts, or any interest whatsoever in the business of **Sonik Trucking Supplies** having its principal place of business at Nadi Back Road, Nadi Fiji and currently operating from Nakasi, Nausori, Fiji;
- b. Restraining the Defendant and/or agents from either entering or interfering with the business premises from which **Sonic Trucking Supplies** operates and or/taking any action which would diminish the value or operational capacity of the said business;
- c. The Plaintiff to place a lock on the business to secure the place and disallow the Defendant from interfering with the business;
- d. Costs of this application; and
- e. Any other relief as the court may deem just.

The Affidavit in Support

4. The affidavit in support was signed in Suva by the Plaintiff before a Barrister and Solicitor and a Commissioner for Oaths on 13th June 2025. The affidavit states that the parties attended mediation on 14th April 2025 and agreed that the Plaintiff's ex-husband should transfer to the Plaintiff Sonic Trucking Supplies for \$50,000 but that **no formal court order has been made to give effect to the agreement**; that she is relying on the agreement in good faith and made preparations for taking over the business.
5. The Plaintiff deposed that following the mediation, her Australian solicitors have not been able to contact her ex-husband's Australian solicitor, and she has instructed her solicitor to make the necessary application in the Family Court to get the necessary orders.
6. The Plaintiff attached a letter from her Australian Solicitor to her in which he gave her a very detailed report of what took place in the mediation. Mediation in a Family matter is normally confidential and without prejudice and this court will respect that. There are however pertinent facts in that report which this court will need to take account of in reaching its decision in this application. The Plaintiff's valuation of Sonic Trucking Supplies in the mediation at Annexure B of her affidavit in support is \$900,000.00
7. The Plaintiff said in her affidavit that she has recently become aware that her ex-husband is now actively taking steps to reduce the value of Sonic Trucking Supplies by selling or attempting to sell assets and stocks of the business and cancelling or diverting business contracts and relationship; that she believes these actions are designed to defeat the agreement they reached during mediation and to prejudice her prospective entitlement to the business. She then states that unless the Defendant is restrained by the court, the Defendant will continue to deal with and dissipate the company assets.

8. There is no cross-undertaking as to damages in the Plaintiff's affidavit.

The Law on Injunctions

9. Order 29 rule 1 of the High Court Rules states:

ORDER 29 – INTERLOCUTORY INJUNCTIONS, INTERIM

PRESERVATION OF PROPERTY, INTERIM PAYMENTS, ETC

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.

(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.

Issue—Does the Plaintiff have Standing to bring this action?

10. The Purpose of Order 29 is to preserve property that is the subject of a cause or matter before the court until the full determination of the case filed in court. Order 29 r 1 states that a "*party to a cause or matter before or after the trial of the matter...*" clearly requires that the Plaintiff herein must have or should have filed a matter in **this court** with the application for interim injunction.
11. The Plaintiff has failed to do so and is relying on this court to issue injunctive orders to preserve property that is the subject of existing litigation in the Family Court of Australia. The Plaintiff does not have an existing interest in Sonik Trucking Supplies (the business).
12. The Plaintiff claims she had agreed with her ex-husband during mediation on 14th April, for her to get the business for \$50,000 yet after the mediation, her Australian Solicitor could not get in touch with her ex-husband's solicitor. Two months later, there is no order of the court reflecting the mediation agreement and we can infer from this that there is no agreement to transfer the business to the Plaintiff and there is no guarantee that the business will be transferred to her.

13. In *Wakaya Ltd v Chambers* [2012] FJSC 9; CBV0008.2011 (9 May 2012) at paragraph 35, the Supreme Court said:

This Court is in agreement with the view of the Court of Appeal that the present case did not come within the principles enunciated in the American Cyanamide v Ethicon [1975] UKHL 1; 1975 AC 396 regarding the granting of interim injunctions as there was no question of balance of convenience in the circumstances of the case as there was no infringement of a proprietary or legal right of the Petitioner.

14. At the time of this application for interim injunctions was filed and at the time of adjudication, the Plaintiff did not have an interest in or right to Sonik Trucking Services and she therefore does not have standing to bring this summons.

Result

15. The Plaintiff has no existing legal interest or right in Sonik Trucking Supplies and can't apply for injunctive orders in this court.
16. I now turn to the law of injunctions and consider whether her prayers set out above should be granted if I am wrong and she has an interest capable of being protected.

The Law on Injunctions

17. In *American Cyanamid Co. v Ethicon Ltd* [1975] UKHL 1;¹ [Lord Diplock laid down certain guidelines for the courts to consider in deciding whether to grant or refuse an interim injunction which are still regarded as leading source of the law on interim injunctions. They are:

- (i) *Whether there is a serious question to be tried at the hearing of the substantive matter;*
- (ii) *Whether the party seeking an injunction will suffer irreparable harm if the injunction is denied, that is whether he could be adequately compensated by an award of damages as a result of the Defendant continuing to do what was sought to be enjoined; and*
- (iii) *In whose favour the balance of convenience lie if the injunction is granted or refused.*

Is there a serious question to be tried?

18. There is no serious question to be tried by this court as there is no substantive case filed by the Plaintiff before it.

Will the Plaintiff suffer irreparable harm if the injunction is denied, that is whether she could be adequately compensated by an award of damages as a result of the Defendant continuing to do what was sought to be enjoined

19. Annexure B of the affidavit in support states that the family home is valued at over \$1million and that her ex-husband owns another company in Australia.

¹ 1975] 2 WLR 316, [1975] AC 396,

20. If the injunction is denied and the Plaintiff's ex-husband has sold off the business assets and stock of Sonik Trucking Supplies, the Family Court in Australia will take account of that in the division of the pool of assets in the matrimonial property. At the moment, since the Plaintiff has no current right or interest in Sonik Trucking Supplies, the Plaintiff will not suffer any harm if the injunctive orders are not granted.

In whose favour does the balance of convenience lie if the injunction is granted

21. If the injunction is granted, the orders sought could be the death knell of Sonik Trucking Supplies. It will not be allowed to trade and its premises will be locked. If the business is not transferred to the Plaintiff by the Family Court, the Defendant would suffer great loss, and the Plaintiff would not be in a position to pay and damages resulting from the grant of the orders sought in this case.
22. The Plaintiff did not offer any cross undertaking as to damages or any evidence at all of her financial position so that the court can assess her means to pay and hence the balance of convenience. In *Honeymoon Island (Fiji) Ltd v Follies International Ltd* [2008] FJCA 36; ABU0063.2007S (4 July 2008) the Court of Appeal said:

16] Applicants for interim injunctions who offer an undertaking as to damages must also proffer sufficient evidence of their financial position. "The Court needs this information in order to assess the balance of convenience and whether damages would be an adequate remedy": Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji) Ltd [2004] ABU 0011 at p12.

[17] The opposing party is able to test or challenge any such financial information and it was appropriate for the trial judge to take into account the late payment of rent due to the NLTB in concluding that the Honeymoon Parties might not be able to secure their undertakings as to damages.

23. Should the interim injunctive orders sought by the Plaintiff be granted, Sonik Trucking Supplies will not be able to trade, with the consequential damage including loss of earnings for the Defendant, loss to third parties such as employees and their families, and creditors to name a few. The loss to the Defendant could therefore be massive.

Result

24. For the reasons given, the balance of convenience clearly is in favour of the Defendant and therefore the orders sought should not be granted.

Forum Conveniens


25. In *Spiliada Maritime v Cansulex Ltd*, 3 All ER 843, Lord Goff of the House of Lords adopted the statement of Lord Kinneir in *Sim v Robinow* (1892) 19 R (Ct of Sess) 655 at 658 describing the plea of *forum conveniens*:

"The plea can never be sustained unless the court is satisfied that there is some other tribunal, having competent jurisdiction, in which the case may be tried more suitably for the interests of all the parties and for the ends of justice."

26. The substantive matter between the parties is the division of the matrimonial property which is currently before the Family Court of Australia. The parties were divorced in Australia and Sonik Trucking Supplies is part of the pool of assets that the Family Court must allocate between the parties. Any interim injunctive orders for the preservation of the assets of the marriage pending the final disposition of the matter is for that Honourable Court to decide. Both parties reside in Australia and the court has jurisdiction to make interim orders.

Conclusion

27. For the reasons given, the application is dismissed.
28. No order as to costs.


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Penijamini R Lomaloma
Acting Puisne Judge

