

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 319 OF 1999

BETWEEN: **SAFARI LODGE FIJI LIMITED** a duly incorporated Company and having its registered Office at Suva, and **WARREN FRANCIS** of Sydney, Australia
PLAINTIFF

A N D: **ROSEDALE LIMITED** a limited liability Company having its registered Office at Suva, Fiji and **DROMAMA LIMITED** a limited liability Company having its registered Office at Suva, Fiji.
DEFENDANT

Appearances: Mr. Gordon R. for the Plaintiff
 Ms. Chand A. for the 1st, 3rd and 4th Defendants / Applicants
 Mr. Kumar N., and Ms. Morgam M. (for Krishna & Company) for the Respondents
 (in this application)

Date of Hearing: 07 February 2025

Date of Ruling: 11 February 2025

R U L I N G

1. This claim was initiated in 1999. It is the oldest case still languishing through the court system. Madam Justice Scutt, in a ruling delivered on 05 February 2008 (seventeen years ago, see **Safari Lodge Fiji Ltd v Rosedale Ltd** [2008] FJHC 139; Civil Action 319.1999 (5 February 2008), had expressed displeasure at the slow progress of this action.
2. Now, seventeen years after Scutt J's ruling, and twenty-six years after initiation of the claim, I have pending before me three interlocutory applications
3. The first is an application by the plaintiff to strike out the defence. The second is an application by the defendant to strike out certain parts of the plaintiffs statement of claim. The third is an application by the defendant seeking an order of this court to interfere with his former solicitors' (Krishna & Company) exercise of purported right of lien.
4. In this ruling, I deal with the third application only.

5. I gather that the retainer between the defendant and Krishna & Company was terminated by the former. The defendant has since retained Anishni Chand Lawyers.
6. However, there are some unpaid costs allegedly owed by the defendant to Krishna & Company for which the latter had rendered a Bill of Costs to the former quite some time ago.
7. There has been no serious attempt by the defendant to challenge these costs. Notably however, the defendant deposes in an affidavit that he disputes the amount. The affidavit in question is filed in these proceedings.
8. For sometime over the course of the last year or so, Anishni Chand Lawyers has been attempting to retrieve the plaintiff's case file from Krishna & Company.
9. However, Krishna & Company will not release the file to Anishni Chand Lawyers. Krishna demands to be paid first. They will only release the file once the outstanding costs are settled in full by the defendant.
10. Ms. Chand argued in Court that her client is prejudiced by the position taken by Krishna & Company.
11. Commissioner John Connors ruling in **Chief Registrar v Lajendra** [2010] FJILSC 3 (13 April 2010) provides an excellent overview on the principles relating to a solicitor's lien. He cites some very useful Australian cases. I have also read some relatively more recent English judgements on the subject (see **Donaghy v JJ Haughey Solicitors** [2019] NI Ch 1; **Ellis v John Hodge Solicitors** (a firm) [2022] EWHC 2284 (Comm); **French v Carter Lemon Camerons** [2012] EWCA Civ 1180; **Higgins v TLT** [2017] EWHC 3868).
12. The general position is that a solicitor or a lawyer has a right to retain certain properties or documents of a client and to release these only after the client has settled outstanding fees.
13. Moore-Bick J in **Ismail v Richard Butler** [1996] 2 All ER 506 states the applicable common law principle thus:

"The basic rule is that a solicitor has the general right to embarrass his client by withholding papers in order to force [the client] to pay what is due and the court will not compel [the solicitor] to produce them at the instance of the client."
14. The question is whether the court can interfere with the enforcement of the common law lien on equitable principles, or on any other principle, as Ms. Chand urges this above Court to do.
15. The case which Commissioner Connors refers to in **Lajendra** (supra) assert that a solicitor's lien may be defeated where a solicitor has committed *fraud or misconduct*. Where such an allegation is raised, the onus is on the client to establish fraud or misconduct.

16. Trivial allegations in general allegations of overcharging against solicitors are unlikely to satisfy this onus. Proof of unsatisfactory professional conduct as defined under statute may be sufficient for this purpose (see **Stark Dennett** [2008] QCA 50 ; **Re Weedman**[1996] FCA 1112 which Commissioner Connors referred to).
17. McBride J in **Donaghy v JJ Haughey Solicitors** [2019] NI Ch 1 sets out the relevant principles. These are summarised by Pearce J in **Ellis v John Hodge Solicitors** (a firm) [2022] EWHC 2284 (Comm) as follows (quote):
- (i). Subject to any agreement to the contrary, a solicitor has a common law right to exercise a general lien in respect of his costs on any property belonging to his client which properly comes into the solicitor's possession in that relationship. As Moore-Bick J put it in **Ismail v Richard Butler** [1996] 2 All ER 506,

"The basic rule is that a solicitor has the general right to embarrass his client by withholding papers in order to force him to pay what is due and the court will not compel him to produce them at the instance of the client."
 - (ii). Solicitors as officers of the court are subject to its supervisory jurisdiction and the court can therefore interfere with the enforcement of the common law lien on equitable principles.
 - (iii). Where it is the solicitor who terminates the retainer, the court will normally make an order obliging the original solicitor to hand over the file to the new solicitor against an undertaking by the new solicitor to preserve the original solicitor's lien (a so-called Robins undertaking, following the decision of **Malins VC in Robins v Goldingham** (1872) LR 13 Eq 440);
 - (iv). Where the client terminates the retainer, this is a weighty factor against interfering with the exercise of the lien, but the court retains the power to do so on equitable principles;
 - (v). When invited to interfere with the exercise of the lien, the court should make the order which best serves the interest of justice, in particular weighing the risk that the client would be deprived of material relevant to the conduct of the case and might thereby be "driven from the judgment seat" if the lien is sustained against the principle that litigation should be conducted with due regard to the interest of officers of the court, who should not be left without payment for what is justly due to them.
 - (vi). In determining the appropriate order, the court should have regard to all of the circumstances of the case, including, in particular:
 - (a). When and why the solicitor/client relation ended;
 - (b). Who ended it;
 - (c). The nature of the case;
 - (d). The stage that the litigation had reached;
 - (e). The conduct of the solicitor and the client respectively;
 - (f). The balance of hardship which might result from the order that the court is asked to make.

(g). The fact that the value of the lien is likely to be considerably reduced if the file is handed over.”

18. Mr. Gordon, who acts for the plaintiff, and who is not directly involved in this battle between the defendant’s former solicitor and the defendant’s new solicitor, urges the court to take into account the case management principles, section 15 (3) of the constitution, and the fact that this is the oldest pending case in the civil division in Fiji (twenty-six years old). Having said that, there is a pending application to strike out the defence by Mr. Gordon’s firm. This needs to be fixed for hearing.
19. In this case, had Krishna & Company terminated the retainer, I would have been more easily inclined to direct that they (Krishna) hand over the file on an undertaking by Anishni Chand Lawyers to preserve Krishna’s right of lien. As Ms. Chand said in Court, neither her firm nor the defendant are willing to enter into a special agreement with Krishna & Company regarding the costs or the lien.
20. Since it was the defendant who had terminated the retainer, I must exercise more caution in interfering with Krishna’s right of lien.
21. I take into account the following:
 - (i) the plaintiff’s claim is for specific performance of a contract or agreement said to require the transfer of land and damages plus interest in lieu.
 - (ii) there is no separate proceeding on foot to review the Bill of Costs rendered by Krishna & Company to the defendant.
 - (iii) this case has had a rather chequered history. It went right up to the Court of Appeal and back on interlocutory issues. The real substantive issue between the parties has never been determined by this Court.
 - (iv) I am mindful of section 15 (3) of the Constitution. While it gives the parties the right to have their cases heard and determined within a reasonable amount of time, it places upon this Court a duty to ensure that this purpose is achieved.
 - (v) both parties have contributed their fair share to the delay. This court also accepts responsibility for some of it.
 - (vi) in my view, the case could be expedited if the parties were to appear before me for a conference to determine the agreed facts and issues.
22. While I am mindful of the solicitor’s right to lien, I am also mindful that if the file is not handed over to the defendant, this twenty-six-year-old pending matter may never ever be resolved.
23. Given the particular circumstances of this case and its rather chequered history, I direct as follows:
 - (i) Krishna & Company is to hand over the file to Anishni Chand Lawyers only if the latter is willing to give an undertaking to honour and preserve the former’s lien. This may mean that if in the event, any judgement is entered in the defendant’s favour, Anishni Chand Lawyers will have to exercise Krishna’s lien (which will have priority) over the judgement sum.

- (ii) if Anishni Chand Lawyers is not willing to give that undertaking, then I will consider an appropriate alternative in Court.
- (iii) in any event, Krishna & Company is at liberty to pursue enforcement through other proceedings.



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Anare Tuilevuka
JUDGE
11 February 2025