

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 065 OF 2024**

**BETWEEN** : **ROVEEN SHIVAN PERMAL**  
**Plaintiff**

**AND** : **PERMALU**  
**Defendant**

**Counsel** : **Mr F Haniff for Intervenor**  
**Mr R Singh for the Plaintiff**  
**Mr E Kumar for the Defendant**

**Hearing** : **5 February 2025**  
**Judgment** : **14 February 2025**

**EX TEMPORE JUDGMENT**

- [1] Permal Construction Pte Limited (PCPL) has applied to be joined as a Second Defendant in this proceeding. The application is resisted by both the Plaintiff and the Defendant. The Defendant is the father of the Plaintiff. He is also the father of Praveen Permal who has brought the present application for PCPL. Praveen is a director of PCPL.
- [2] The dispute between the Plaintiff and Defendant pertains to a transfer of shares in PCPL. The company was incorporated on 22 August 1990. As per the affidavit of the Defendant, he started the company and appears to have been the sole shareholder at its incorporation.
- [3] In April 2023, the Defendant agreed to transfer 30% of his shareholding to the Plaintiff and 20% to Praveen.
- [4] A Transfer of Shares was signed by the Defendant on 27 April 2023 in respect to the transfers to each of his sons. Praveen deposes in his affidavit dated 6 October 2023,

that he and the Defendant agreed at a Directors' meeting that it was not in the best interests of the company for the Plaintiff to become a shareholder and a resolution was passed by the directors to this effect on that date. Praveen further deposes that in October and November 2023 the Defendant wrote to PCPL's solicitors instructing them to stop their arrangements to transfer the shares to the Plaintiff. The Director's resolution and the correspondence from the Defendant to the solicitors are annexed to Praveen's affidavit.

[5] As such, the transfer to the Plaintiff did not occur. However, the transfer to Praveen was registered on 8 December 2023. Around this time, there appears to have been discussion between the Defendant and his two sons to try and resolve the issue with respect to the share transfer to the Plaintiff. A deed of settlement was prepared but was not signed.

[6] On 12 March 2024, the Plaintiff filed the present proceedings against his father. The relief sought in the Statement of Claim included:

- i. An Order for Specific Performance against the Defendant for the transfer of 30% shares in the Permal Construction Pte Limited to the Plaintiff.*
- ii. An Order that the Defendant immediately attend to the transfer of the said 30% shares completed and registered in favour of the Plaintiff.*

[7] These proceedings were served on the Defendant in March, 2024. Shortly, thereafter, the parties settled the claim. A 'Terms of Settlement' was executed by the parties on 10 April, 2024 and filed with the High Court Registry the same day. The terms are as follows:

- 1. THE Defendant shall transfer his Nine Thousand shares (30%) Ordinary S1-00 shares in the company called PERMAL CONSTRUCTION PTE LIMITED (Company No. 8773) to the Plaintiff in consideration of his natural love and affection for the Plaintiff.*
- 2. THE Defendant shall have the Transfer of said Shares dated 27 April, 2023, registered with the Registrar of Companies who shall enter the said Transfer in the records of the said Company.*

3. *THE Plaintiff will discontinue this action with no order as to costs.*

4. *THIS Terms of Settlement shall be made in Order of this Court.*

- [8] On 1 May, 2024, PCPL appears to have become aware of the Terms of Settlement and the intention of the parties to register the Plaintiff's shareholding with the Registrar of Companies. On 3 May 2024, PCPL filed the present application along with a supporting affidavit from Praveen.
- [9] It appears that the current records held by the Registrar of Companies show that Praveen holds 70% of the shares of PCPL while the Defendant holds 30%. Both are directors. The Defendant filed an affidavit on 24 July 2024 alleging fraud against Praveen. The Defendant says that he only agreed to transfer 20% of his shareholding to Praveen and has no knowledge how Praveen has secured the additional 50% shareholding. The Defendant also says that he has no knowledge of the correspondence allegedly sent in his name to PCPL's solicitors in October and November 2023. The Defendant says that it was always his intention to transfer 30% to the Plaintiff - which does raise the issue why these proceedings were even necessary if that was the case.
- [10] The Plaintiff filed his own affidavit on 30 July 2024 deposing to the fact that these proceedings have been settled between the parties.
- [11] In terms of the respective positions of the parties, I deal first with PCPL. The company's position is as follows:
- i. The company should be joined as a second defendant under O.15, r.4(1) or O.20, r.5(1) of the High Court Rules 1988, or alternatively under ss 180 and 183 of the Companies Act 2015.
  - ii. The company relies on clause 33 of the Memorandum of Association for PCPL, which reads:

*The Directors may in their absolute and uncontrolled discretion refuse to register any proposed transfer of shares.*

- iii. PCPL argues that the directors passed a valid resolution refusing to register the shares of the Plaintiff on the basis that such is in the best interests of the company. It seeks to be joined in the proceeding in order to protect its position.

[12] The Plaintiff and Defendant are of the same position. Both oppose any joinder for the following reasons:

- i. This proceeding involves a dispute between two individuals over the transfer of shareholding from one to the other. The company has no interest in this dispute.
- ii. The dispute has already been resolved by the two parties and a Terms of Settlement executed and filed. There is no justification to keep this proceeding alive. PCPL's recourse is to file separate proceedings to set aside any share transfer that is registered.

### **Decision**

[13] I have decided to grant the application and join PCPL as a Second Defendant, as well as join the Registrar of Companies as a nominal party. My reasons for this are these:

- i. The Court has a power under O.15, r.4(1) to make these orders. The provision reads:

*Subject to rule 5(1), 2 or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where-*

*(a) If separate actions were brought by or against each of them, as the case may be, **some common question of law or fact** would arise in all actions, and*

*(b) All **rights to relief claimed in the action** (whether they are joint, several or alternative) are in respect of **arise out of the same transaction or series of transactions.**<sup>1</sup>*

- ii. The Court has power to join a party where the same question of law or fact arises or may arise in separate proceedings and the relief claimed arise from the same

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<sup>1</sup> My emphasis.

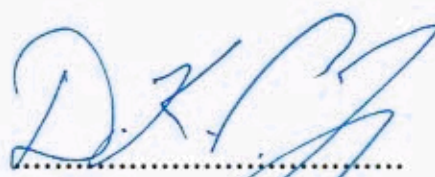
or series of transactions. The rationale for joining parties in such circumstances is to promote expedient litigation where there are separate proceedings afoot, or contemplated. It is an inexpedient use of judicial time and resources for the same question of fact or law to be determined in separate proceedings.

- iii. The dispute between the Plaintiff and Defendant, if there was ever genuinely a dispute, is not confined to them but involves PCPL. In this respect, the relief sought in the Statement of Claim and Terms of Settlement are relevant. The two parties seek to register the transfer with the Registrar of Companies and have filed the Terms of Settlement in order to obtain a Court order compelling the Registrar of Companies to register the transfer.
- iv. PCPL resists any transfer to the Plaintiff and should be permitted an opportunity to be heard in the proceeding. PCPL argues that it has power under its Articles of Association to refuse to register any transfer of shares where the refusal is in the best interest of the company. On the face of it, the directors of PCPL have passed a resolution refusing to accept the transfer to the Plaintiff. The Defendant alleges fraud against Praveen. These matters cannot be determined in the present application and PCPL ought to be given an opportunity in this proceeding to have the matters determined before any order is made by the Court compelling the registration of the share transfer.

[14] My orders are as follows:

- i. Permal Construction Pte Ltd. is to be joined as a Second Defendant.
- ii. The Registrar of Companies is to be joined as a nominal party.
- iii. Costs to be in the cause.



  
D. K. L. Tuiqeregere  
JUDGE

**Solicitors:**

Sherani & Co for Plaintiff

Emmanuel Lawyers for Defendant

Haniff Tuitoga for Intervenor