

IN THE HIGH COURT OF FIJI AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 56 of 2017

BETWEEN : SHANTI HARILAL RAMA also known as SHANTI RAMA also  
known as SHANTI LAL

Plaintiff

AND : BHAGWAT HARILAL RAMA also known as BHAWAT RAMA also  
known as BHAGVATRAI HARI LAL also known as BHAGWAT  
HARILAL

First Defendant

AND : JOSHIKA SAMUJH

Second Defendant

AND : RAMA & SONS LIMITED

Third Defendant

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr N. Prasad for the Plaintiff  
Mr R Naidu for the First, Second and Third Defendants

Date of Hearing : 12 September 2017

Date of Decision : 14 November 2017

## INTERLOCUTORY JUDGMENT

1. This is an application by the Plaintiff for an injunction or an interim preservation order restraining the Defendants by themselves or by their servants and/or agents from dealing with the Estate assets until the determination of the action.
2. At the hearing of the application the Plaintiff's Counsel said no action had been taken against the executors of the Estate. The Plaintiff only became aware of the alleged forgery of the signature in late 2013. There was no transfer of the shares in the company registry. He asked for an interim freezing order until the full hearing of the matter.
3. There was nothing in Counsel's oral submission about the other prayer, in the application, for the Defendants to tender an account of the proceeds of sale of the properties specified therein. This is correct because providing the accounts can only properly be ordered at the conclusion of the full hearing and not at this interlocutory stage and certainly not in an application for an interlocutory injunction.
4. Counsel for the Defendants said the matter goes back to 2011 and there was no urgency. There was also no relief claimed for a permanent injunction. He said damages are an adequate remedy. The Plaintiff says she is unable to provide an undertaking.
5. Counsel for the Plaintiff in his reply said the court can dispense with the undertaking as to damages.

6. At the conclusion of the arguments I said I would take time for consideration. Having done so, I now deliver my decision.
7. At the outset I note from the statement of claim that the Plaintiff's complaint, if any, should have been directed against the executors of the estate, which her Counsel confirmed she has not. Further, any action against the Defendants should have been brought by the executors. In these circumstances I fail to see how she could conceivably obtain an interlocutory injunction against the present Defendants.
8. I am fortified in my conclusion by the words of Lord Denning M.R. in *Hubbard a Anor v. Vosper & Anor* [1972] 2 Q.B 96 where he said "In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also to the strength of the defence, and then decide what is best to be done. Sometimes it is best to grant an injunction so as to maintain the status quo until the trial. At other times it is best not to impose a restraint upon the defendant but leave him free to go ahead".
9. I am also mindful of the fact that an injunction is an equitable relief. The inaction on the part of the Plaintiff brings into operation the matters that the Court has to consider when it has to decide whether in its discretion it will grant this equitable remedy.
10. The first is acquiescence. Osborn's Concise Law Dictionary (7<sup>th</sup> edit) (Osborn) defines this "as assent to an infringement of rights, either expressed or implied from conduct by which the right to equitable relief is normally lost".



11. The second is laches. This is defined by Osborn as "negligence or unreasonable delay in asserting or enforcing a right. The equitable doctrine that delay defeats equities or that equity aids the vigilant and not the indolent.
12. Finally, the legal position of interlocutory injunctions is very clear. It has been expressed lucidly and succinctly by Lord Diplock in : American Cyanamid Co. v. Ethicon Ltd [1975] A.C. 396, as follows:
  - (1) The Plaintiff must establish she has a good arguable claim to the right she seeks to protect.
  - (2) The Court must not attempt to decide this claim on the affidavits.
  - (3) The grant or refusal of an injunction is a matter for the exercise of the Court's discretion on the balance of convenience.
13. At the end of the day, I am not satisfied that the Plaintiff has shown she has a good arguable claim. Nor has she shown why damages would not be a sufficient remedy.
14. In the result, I shall dismiss the Summons filed on 2 May 2017, refuse the Plaintiff's application for an interlocutory injunction and order the Plaintiff to pay the 3 Defendants costs of this Summons summarily assessed at \$500.

Delivered at Suva this 14<sup>th</sup> day of November 2017.



David Alfred

JUDGE

High Court of Fiji