

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURSDICTION**

**Civil Action No. HBC 11 of 2019**

BETWEEN

**ORGANICA FINE PRODUCE (FIJI) PTE LTD** having its registered office at  
Unit 2C, Lot 43, Wailada, Suva.

**FIRST PLAINTIFF**

AND

**JAVIER CARLOS IZQUIERDO** Managing Director, of  
Organica Fine Produce (Fiji) Pte Ltd, having its registered office at  
Unit 2C, Lot 43, Wailada, Suva.

**SECOND PLAINTIFF**

AND

**WILLIAM & GOSLING LTD** having its registered office at 82,  
Harris Road, Suva.

**FIRST DEFENDANT**

AND

**DAVID VAUGHAN AIDNEY** Managing Director of William & Gosling Ltd,  
having its registered office at 82, Harris Road, Suva.

**SECOND DEFENDANT**

**EDDIE YUEN** Chief Executive Officer and/or Chief Operating Officer of  
William & Gosling Ltd, having its registered office at 82,  
Harris Road, Suva.

**THIRD DEFENDANT**

**Counsel** : First Plaintiff absent and unrepresented.  
Second plaintiff in person.  
Mr. S.J. Stanton with Mr. N. Prasad and Mr. D. Kumar for  
the Defendants.

**Date of Hearing** : 02<sup>nd</sup> August, 2019.

**Date of Ruling** : 26<sup>th</sup> August, 2019

**RULING**

*(On The Application for an Interim Injunction)*

- [1] The plaintiffs instituted these proceedings against the defendants seeking damages on various grounds which is not relevant to the application before this court.
- [2] The defendants on 10<sup>th</sup> April, 2019 filed summons pursuant to Order 29 rule 1 and Order 32 of the High Court Rules and under the inherent jurisdiction of this court, seeking the following orders:

- (a) An injunction restraining the 1<sup>st</sup> and the 2<sup>nd</sup> plaintiffs jointly and/or severally whether by themselves or by their servants and/or agents or by whosoever from directly or indirectly communicating with or contacting the members, directors, executives, officers, agents or servants of the 1<sup>st</sup> defendant, the 2<sup>nd</sup> defendant and the 3<sup>rd</sup> defendant whether in person, by email, letter, telephone or any other manner whatsoever until the determination of this action or further order of this court;
- (b) the costs of this application shall be paid by the plaintiffs jointly or severally on an indemnity basis based on the email dated 4 April 2019 at 10.14am from the defendant's solicitors to the plaintiffs; and
- (c) any further or other relief in aid of the prayers sought herein as this Honourable Court deems just an equitable.

[3] This application is for an interlocutory injunction against the plaintiffs until the final determination of the substantive matter. Before considering the facts and the background of the matter which led to the filing of this application I will consider in brief the law relating to interim injunctions. The following guidelines laid down in **American Cyanamid Co. v Ethicon Ltd** [1975] 2 W.L.R. 316, [1975] A.C. 396 by Lord Diplock are often considered in granting or refusing an interim injunction:

- (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.

[4] However, these guidelines cannot be considered as the substantive law of injunctions. Lord Diplock in his judgment also said:



I would reiterate that, in addition to those to which I have referred, there may be many other special factors to be taken into consideration in the particular circumstances of individual cases.

**Kerr LJ in Cambridge Nutrition Ltd v BBC** [1990] 3 All ER 523 at 534 said:

It is important to bear in mind that the American Cyanamid case contains no principle of universal application. The only such principle is the statutory power of the court to grant injunctions when it is just and convenient to do so. The American Cyanamid case is no more than a set of useful guidelines which apply in many cases. It must never be used as a rule of thumb, let alone as a straitjacket .... The American Cyanamid case provides an authoritative and most helpful approach to cases where the function of the court in relation to the grant or refusal of interim injunctions is to hold the balance as justly as possible in situations where the substantial issues between the parties can only be resolved by a trial.

- [5] In the present application the allegation of the defendants is that the plaintiffs without communicating with the solicitors sent e-mails directly to the defendants. The defendant have attached several e-mails sent by the plaintiffs to the affidavit in support.
- [6] The first e-mail was sent 30<sup>th</sup> January, 2019, to one Oliver Ravel who is a director of PDL International Pte Ltd based in Singapore, offering settlement. The solicitors of the defendants then wrote to the solicitors of the plaintiffs requesting them to advice the plaintiffs to refrain from contacting their client and its directors.
- [7] On 30<sup>th</sup> January, 2019 the 2<sup>nd</sup> plaintiff wrote another email to the defendant's Solicitor Mr Nilesh Prasad, Mr Dave Aidney, Mr Eddie Yuen and Mr Oliver Ravel Stating inter alia, the following:

RE: HBC 11 of 2019 Notice by the plaintiffs to disqualify you and your firm from acting for the Defendants

Mr Ravindra-Singh and myself were extremely surprised you and your firm purport to act for Defendants given the allegations and pleadings within the plaintiffs' statement of claim served on the Defendants ("**statement of claim**").

As you well know, or should know, the mater and allegations within the plaintiffs statement of claim make you a witness to proceedings.

[8] On 03<sup>rd</sup> April, 2019 the 2<sup>nd</sup> plaintiff sent another e-mail to the plaintiffs' solicitor Mr Sharma with copies to Dave Aidney, Eddie Yuen and Oliver Ravel. In the said e-mail he stated inter alia:

Firstly, as previously stated by their email to on 30 January 2019, below, the plaintiffs assert:

- (1) You are a witness in these proceedings and will be called as a witness and cannot act as counsel for the defendants in these proceedings ("**the Defendants**"); and
- (2) Notwithstanding you and Mitchel Keil ("**Your firm**") have a conflict of interest in the (unlawful) joinder with the defendants (unlawfully) threatening (unjust and unsustainable) High Court proceedings and (unwarranted) demands against the writer ("**2<sup>nd</sup> plaintiff**") for defamation and/or malicious falsehood and cannot act as counsel for Defendants:
- (3) Paragraphs (1) and (2) above are not limited to, or an exhaustive statement in anyway whatsoever as to grounds you and your firm cannot act, as the Defendants counsel in these proceedings or the plaintiffs claims against the defendants in these proceedings; and
- (4) Paragraphs (1), (2) and (3) above are collectively referred to as "**Plaintiffs assertions**".

[9] The 2<sup>nd</sup> plaintiff sent another e-mail to the same parties saying the writer awaits service of you and your clients' immediate injunction at the address 184 Ratu Sukuna Road, Nasese.

[10] The learned counsel for the defendants submitted that the defendant's concerns are ably deposed in paragraphs 13 to 17 of Mr Yuen's affidavit and the need for injunctive relief is satisfied as:

13. I am advised by our solicitors that under rules of court once solicitors are duly appointed all matters to do with that action should be directed to that office and not the parties directly.



14. The 2<sup>nd</sup> plaintiff continues to disregard the rules of court even after being repeatedly
15. The 2<sup>nd</sup> plaintiff continues to disregard the rules of court even after being repeatedly reminded to refrain with a view to intimidate the defendants and Mr Ravel
16. The present action filed by the plaintiffs is devoid of merit and the defendants' have a valid defence to the allegations.
17. We as defendants would like a fair opportunity to defend this action through our solicitors without fear, threat and intimidation by the plaintiffs in the manner that has been communicated to us. The 2<sup>nd</sup> plaintiff has failed to take heed of the notice to stop. I fear that unless the 2<sup>nd</sup> plaintiff is restrained by this Honourable Court he will continue with his threats directly to us and Mr Ravel which is unfair and prejudicial to all of us as litigants in this action.

[11] I am not aware of any rule of court that one party to an action cannot directly contact the other party without going through their respective solicitors. There is, of course, a practice that generally the parties communicate with each other through their solicitors. However, this does not mean that the parties are prohibited from contacting each other directly.

[12] For the court to consider granting the injunction sought by the defendants there must be a violation of a right. What the 2<sup>nd</sup> plaintiff stated in his e-mails may be inappropriate but it does not have any adverse effect on the relationship between the defendants and their solicitors.

[13] There is no doubt that any party to a proceedings before a court of law is entitled to be represented by a solicitor. The defendants have in fact obtained services of a solicitor firm. The said firm is still acting as solicitors of the defendants.

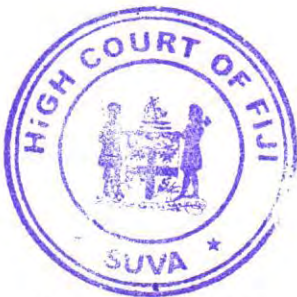
[14] The defendants have tendered as many as twenty judgment in support of their application. The learned counsel has reproduced certain paragraphs from the decisions relied on by the defendants in his written submissions. In most of these

decisions the court has discussed the duties of the court towards unrepresented litigants which is not relevant to the issue before this court.


- [15] One of the main purposes of granting an interim injunction is to maintain the status quo until the final determination of the substantive matter. In his judgment Justice Ajmeer in *Mahendra Deo v Shareen Lata Hans aka Shareen Lata Deo HBC 121 of 2018* decided the interim injunction sought on the same basis.
- [16] As observed by Lord Diplock in *American Cyanamid* case apart from the three guidelines set out there can be many other factors to be taken into consideration in deciding whether to grant or refuse an interim injunction. However, it does not mean that the court is entitled to disregard the guidelines laid down in *American Cyanamid* case which are still considered authoritative and most helpful approach as observed by Kerr LJ in *Cambridge Nutrition Ltd v BBC* [1990] 3 All ER 532, and grant an interim injunction arbitrarily.
- [17] For the above reasons I see no sufficient grounds to grant an interim injunction sought by the defendants in their summons.

### **ORDERS**

1. The application for interim injunction of the defendants is refused.
2. The defendants are ordered to pay \$2000.00 as costs (summarily assessed) to the plaintiffs.



26<sup>th</sup> August, 2019

  
Lyone Seneviratne  
**JUDGE**