

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

**CIVIL ACTION No. HBC 266 of 2023**

**BETWEEN: XIAOLONG HU & LIJUAN ZHENG**  
**Plaintiffs**

**AND: LIANG DING**  
**First Defendant**

**AND: WEIXIANG CAO**  
**Second Defendant**

**AND: JULIAN SUNG KONG YUEN**  
**Third Defendant**

**AND: REGISTRAR OF COMPANIES**  
**Fourth Defendant**

**AND: ATTORNEY-GENERAL OF FIJI**  
**Fifth Defendant**

**AND: RESERVE BANK OF FIJI**  
**Sixth Defendant**

**Before: Hon. Mr. Justice D. K. L. Tuiqereqere**

**Hearing: 12 December 2023**

**Counsels: Ms V Tosokiwai and Mr A Takalaivuna for Plaintiffs**

**Judgment: 19 December 2023**

**JUDGMENT**

- [1] The Plaintiffs seek urgent injunctive orders by way of an Ex-Parte Summons filed in this Court on 06 December 2023.
- [2] The Plaintiffs, who are married, do not appear to be citizens of Fiji. They are from China as are, it appears, the First, Second and, possibly, the Third Defendant.
- [3] The Plaintiffs are the original shareholders and directors, as well as founders, of WG International Real Estate Co. (Fiji) PTE Limited (hereinafter referred to as “**WG Ltd**”). The company was established by the Plaintiffs to, inter alia, build a multi-level complex in Suva, identified by the Plaintiffs as the WG Friendship Plaza.
- [4] This proceeding stems from allegations by the Plaintiffs that the First, Second, and, to a lesser extent, Third Defendant dishonestly and fraudulently secured a significant shareholding as well as control of WG Limited, leaving the Plaintiffs devoid of their ownership and any decision-making role.
- [5] The purpose of the present Ex-Parte Summons is to restrain the said three defendants from making any further changes to the ownership of WG Ltd or the WG Friendship Plaza until determination of this proceeding. The Plaintiffs also seek interim orders authorizing the Plaintiffs to take control over the affairs of the company and the construction of the WG Friendship Plaza.

### *Background*

- [6] The facts are taken from the Plaintiffs’ pleadings and the two affidavits by the first named Plaintiff, Mr Xiaolong Hu, filed in support of the Ex-Parte Summons.
- [7] Mr Hu deposes to the correctness of the pleadings and supplies a number of supporting documents annexed to his affidavits.
- [8] The relevant events begin about ten years ago. In December 2013, the Plaintiffs incorporated WG Ltd in Fiji. Mr Hu was allocated an 80% shareholding whilst Ms Lijuan Zheng received a 20% shareholding. Both were appointed directors of the company. The intention behind incorporating WG Limited was to build the WG

Friendship Plaza. The Plaintiffs intended to secure financing for the construction through investors in China. It appears that the plans for the construction have changed from time to time but the current intention is to construct a 24-level plaza. I should add, that in addition to being the founders of the company and the project, they say they were the founding investors and they were also instrumental in every facet of the project; the concept planning, drawing, engineering, construction and procurement of the materials.

- [9] Upon incorporation, the Plaintiffs' obtained a Tax Identification Number for the company from Fiji Revenue and Customs Authority and opened three bank accounts, one with the ANZ and two accounts with Westpac.
  
- [10] A site was purchased for the WG Friendship Plaza at 59 Macgregor Road, Suva. It appears that WG Ltd paid FJD\$3.3 million for the property. It is not clear when construction of the WG Friendship Plaza commenced but it will be clear to any observer who happens to be in or near that property that the multi-story building is one of the tallest buildings in Suva and, by all accounts, very well into its construction.
  
- [11] The Plaintiffs say that between 2014 to 2020 WG Ltd received funding of approximately FJD\$22 million and US\$7 million. These monies were paid into the three local bank accounts.
  
- [12] As can be seen from the above chronology, at least for the period from 2013 to about 2019 it appears that the Plaintiffs were the primary drivers behind WG Ltd and the construction of the WG Friendship Plaza.
  
- [13] Events in 2019 were to prove significant for the current litigation.
  
- [14] According to the Plaintiffs, in July 2019 they signed an agreement in the Chinese language (in mandarin) with the First and Second Defendant. In consideration for the two defendants providing a substantial injection of funds (being 44% of the value of WG Limited from the First Defendant and 8% of the value from the Second Defendant), they would be given a shareholding in WG Ltd. According to the Plaintiffs' the payments from the two defendants were required to be made by 30 June 2020.

[15] The Plaintiffs' say that they did not at any time receive the said monies from the two defendants and, therefore, there was no basis to proceed with the agreement.

[16] In November 2019, the Plaintiffs' travelled to China. There followed the worldwide covid pandemic which the Plaintiffs say prevented their return to Fiji until April 2023.

[17] Whilst in China, the Plaintiffs' say that the First, Second and the Third Defendant engaged in fraudulent and dishonest conduct that deprived them of their majority shareholding in WG Ltd as well as control of the company and the WG Friendship Plaza project. This alleged conduct includes;

- i. The fraudulent execution of a Shareholders Resolution Approving New Share Issuance (hereinafter referred to as the "2019 Resolution") for WG Ltd. This document is attached to Mr Hu's affidavit at annexure 6. According to the contents, the 2019 Resolution was signed by the First and Second Defendant in April 2018 and, purportedly, signed by the two named Plaintiffs on 28 July 2019. The 2019 Resolution purports to issue additional shares in WG Limited as well as transfer shares from the Plaintiffs to the First and Second Defendant. The net effect of the 2019 Resolution being that Mr Hu was left with a 38.4% shareholding and Ms Zheng with 9.60%, while the First Defendant received a 44% shareholding and the Second Defendant an 8% shareholding. The two defendants effectively became the majority shareholders of WG Ltd. Mr Hu claims that the 2019 Resolution is a fabricated document. He states that neither he nor the second named Plaintiff signed the 2019 Resolution and that their signatures have been copied and pasted from another document onto the 2019 Resolution. In support of this contention, Mr Hu supplies, at annexure 5 to his affidavit, a Fiji Immigration Border Control document which shows that he left Fiji on 6 July 2019. Mr Hu says he was not physically in a position to sign the 2019 Resolution in Fiji on 28 July 2019. The Plaintiffs say that the 2019 Resolution was used on 24 June 2020 to effect a change to the company structure with the Registrar of Companies.
- ii. The Plaintiffs also say that that the First and Second Defendant relied on the 2019 Resolution to effect a change to the directorship of the company in 2022. On 13 July 2022, the First and Second Defendant allegedly added

themselves as Directors of WG Ltd. Their directorships in turn allowing the two defendants to exert control over the decision making of the company and the construction of the WG Friendship Plaza.

iii. As a result of i. and ii. above, the two defendants have taken over the operation and finances of WG Ltd. The log in details for the three bank accounts have allegedly been changed. The Plaintiffs are now excluded from access to the bank accounts as well as access to WG Ltd's portal with Fiji Revenue and Customs Service. The two defendants also allegedly passed a resolution in September 2020 hiring the Third Defendant and authorizing him to handle all banking transactions for WG Ltd. The Plaintiffs say these matters were unknown to them at the time.

[18] The Plaintiffs say that the three defendants' fraud is not limited to the affairs of WG Ltd. They point to the First and Third Defendants conduct with a related company, A Plus Investment Limited (hereinafter referred to as "A Plus Ltd").

[19] In December 2016, the Plaintiffs purchased, on behalf of WG Ltd, the shareholding of A Plus Ltd which was then owned by Jansong Kailam Ng and Xiao Yang Lin. At that time, A Plus Ltd owned a property at 193 Queen Elizabeth Drive, Suva. The agreement to transfer their shares to WG Ltd was in consideration for, it seems, payment of FJD\$1,680,000.00. Payment for these shares was made the same month. It appears that the Plaintiffs became directors of A Plus Ltd from that time. It also appears that WG Ltd operated from 193 Queen Elizabeth Drive and was that company's registered address.

[20] In December 2019, after the Plaintiffs left Fiji to travel to China, a Sale and Purchase agreement was completed for the sale of the property at 193 Queen Elizabeth Drive. The Plaintiffs' claim that the First and Third Defendant were behind this sale and that they fraudulently effected the sale.

[21] The Sale and Purchase Agreement is annexure 12 to Mr Hu's affidavit. The agreement was between A Plus Ltd, the vendor, and Anwar and Anwar Paradise Property Limited, the purchaser. The amount of the sale was for \$1,150,000.00. A deposit of \$50,000.00 was to be held by the agent. The settlement date is identified on the agreement as 31 May 2020. Mr Hu deposes that the First Defendant signed the Sale and Purchase Agreement for A Plus Ltd without having any lawful authority to do so.

- [22] It appears that the sale did not settle on the due date and, therefore, the purchaser commenced proceedings in the Suva High Court in August 2020 seeking specific performance. A Plus Ltd instructed the law firm, Sherani and Co, to represent it. It is unclear from the documentation annexed to Mr Hu's affidavit, which includes a letter from Sherani and Co dated 23 April 2021 (ie annexure 18), which person at A Plus Ltd instructed Sherani & Co. Sherani & Co confirm in their correspondence that they acted for A Plus Ltd in the High Court proceedings, but do not identify who specifically at A Plus Ltd instructed them. In any event, Sherani & Co advised in April 2021 that they were instructed by A Plus Ltd to settle the then High Court proceedings, that a settlement occurred in January 2021, that the settlement proceeds were received into that firm's Trust Account, and, finally, that the proceeds were '*paid out as per the instructions received from A Plus*'. It appears, from annexure 13 to Mr Hu's affidavit, that the Third Defendant signed the Transfer of Land in Fee Simple on 12 January 2021 as a Director of A Plus Ltd.
- [23] The Plaintiffs appear to have got wind of the sale in about 2020 or 2021, as evidenced by annexures 15 to 18 of Mr Hu's affidavit. The Plaintiffs instructed O' Driscoll & Co to lodge a caveat over the title of the property but were unsuccessful because the original shareholders, Jansong Kailam Ng and Xiao Yang Lin, were still recorded as the directors and shareholders of A Plus Ltd with the Registrar of Companies, and, as such, the Plaintiffs had no standing to lodge a caveat.
- [24] There were then efforts made by O' Driscoll and Co, on behalf of the Plaintiffs, to prevent the settlement of the then High Court proceedings. I should note at this point that I had assumed that the 2020 proceedings were discontinued following the settlement in early 2021 but was informed by the Plaintiffs' counsel at the hearing of this application that the 2020 proceedings are still on foot.
- [25] In any event, the allegation here is that First and Third Defendant have fraudulently and dishonestly, without any colour of right, sold the Queen Elizabeth Drive property owned by A Plus Ltd and pocketed the proceeds of the sale.
- [26] As stated, the Plaintiffs returned to Fiji in April 2023. They became aware that the First, Second and Third Defendant had been engaging in the allegedly fraudulent behavior and had taken control of WG Ltd and the WG Friendship Plaza project. The Plaintiffs' counsel stated at the hearing that their firm had, on behalf of the Plaintiffs, made a formal complain to the Police in or about May 2023 regarding

the three defendant's conduct and that the Police investigation is currently ongoing. This letter of complaint was subsequently provided to this Court, annexed to Mr Hu's Supplementary Affidavit.<sup>1</sup>

*Present proceedings*

[27] The Plaintiff's filed a Writ of Summons and Statement of Claim on 1 September 2023. They have pleaded the above-mentioned fraudulent conduct by the First, Second and Third Defendant. They seek by way of relief, a number of orders, namely:

- i. An order that the First, Second and Third Defendant refrain from negotiating any further sale of any shares and/or sale of WG Ltd and or WG Friendship Plaza.
- ii. An order that the Fourth Defendant, the Registrar of Companies, rectify the anomalies in its vetting, due diligence process in the filing of company document relating to WG Ltd from between 2 April 2020 and 3 June 2022 and to correct the entries to the companies portal that reflects the correct investment/shareholding brought in by the parties according to the Sixth Defendant's, the Reserve Bank of Fiji, records.
- iii. That the Registrar of Companies revert the shareholdings back to the original shareholding structure filed, representing the 80%, 20% share structure of the Plaintiffs until the First, Second and Third Defendants are able to justify the increase of shares they filed with the Registrar of Companies.
- iv. That the Reserve Bank of Fiji provide funds/investment figures that were received into the bank accounts of WG Ltd and the timelines of receipt of such deposits.

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<sup>1</sup> Annexure 11.

- v. That the First, Second and Third Defendant account for the sale price of the property that were sold at 193 Queen Elizabeth Drive to the value \$1,150,000.00.
- vi. That the First, Second and Third Defendant provide full accounting on all the funds spent from October 2019 to the present on all the company accounts in the name of WG Ltd.
- vii. An order for a full and proper account of all the stock, materials and imported items for the sole use of the WG Friendship Plaza.
- viii. An order that all the actions, decisions, and company resolutions made are void ab initio and of no legal effect.
- ix. An order for specific damages of \$196,400.00.
- x. Orders for general damages, interest and costs.

[28] Each of the six defendants have acknowledged service of the proceedings and filed a Statement of Defence. The First Defendant filed an amended Statement of Defence and Counterclaim on 22 November 2023. The Plaintiffs filed a Reply and Defence to the Counterclaim on 11 December 2023.

### *Ex-parte Summons*

[29] On 6 December 2023, some three months after this proceeding was commenced, the Plaintiffs filed the present Ex-Parte Summons for Injunction and supporting Affidavit from Mr Hu dated 5 December 2023. The injunctive orders sought by the Plaintiffs are identified as follows in the Summons:

- i. That the First, Second, and Third Defendant are restrained by themselves and/or their servants or agents from proceeding with any dealing (including but not limited to advertising for sale, transfer, lease



or the sale of property) with respect to the property at 59 Macgregor Road, or in any manner whatsoever, interfering with the said property, until the hearing and final determination of this proceeding.

- ii. That the First, Second and Third Defendant must consult with the Plaintiffs on any expenditure and any future plans made to or in relation to the building at 59 Macgregor Road, otherwise known as the WG Friendship Plaza.
- iii. That the First, Second and Third Defendant are restrained from registering any dealing in respect to the Certificate of Title for the property at 59 Macgregor Road.
- iv. That this Court impose any additional order it deems fit in the circumstances of the matter.

*Hearing of the Ex-Parte application for injunctive orders*

[30] I heard from the Plaintiffs' counsel on 12 December 2023. Counsel also answered my questions, albeit with the occasional assistance from the Plaintiffs who were in attendance. Some of the responses were not contained in the sworn evidence and, as such, the Plaintiffs were permitted an opportunity to file a supplementary affidavit after the hearing.

[31] The arguments for the Plaintiffs in support of the Ex-Parte application are summarized below:

- i. Ms Tosokiwai led me through her detailed written submissions which set out the background and the applicable legal principles for the making of interim injunctive orders. The Plaintiffs argue that the three-pronged test originally identified in the English decision of **American Cyanamid Co v Ethicon Ltd** [1975] (1) ALL. E.R 504, were satisfied in the present case. As such, the injunctive orders as sought ought to be made.

- ii. Ms Tosokiwai states that the Plaintiffs are prepared to provide an undertaking as to damages. I note that an undertaking is not contained in Mr Hu's two affidavits and nor is there any information provided regarding the financial circumstances of the Plaintiffs to permit the Court to determine the Plaintiff's ability to satisfy any such undertaking.
  
- iii. The construction of the WG Friendship Plaza continues despite the dispute between the Plaintiffs and the said three defendants. The day-to-day decisions for the company and the construction of the WG Friendship Plaza are being made by the three defendants. The Plaintiffs currently have no role or involvement.
  
- iv. Mr Hu is a certified and licensed architect. He designed the WG Friendship Plaza. He is concerned with the current construction of the project. Mr Hu notes that an engineering company has identified non-compliance issues and Mr Hu has concerns that the materials being used in the construction are not of the required standard, potentially compromising the safety for future occupants. He has supplied copies of correspondence from 2020 and 2021 addressed to the First and Third Defendant from an engineering company informing the two defendants of non-compliance issues in respect to the construction of the WG Friendship Plaza.
  
- v. Counsel confirmed that a caveat lodged against the Certificate of Title for the property at 59 Macgregor Road, being annexure 1 to Mr Hu's initial affidavit, was lodged by the Plaintiffs.
  
- vi. I noted during the hearing that the present injunctive relief is being sought by the Plaintiffs three months after the proceedings have been filed and enquired as to an explanation for the timing of this urgent summons. Ms Tosokiwai provided two reasons. Firstly, as per the first affidavit of Mr Hu at paragraph 19, the Plaintiffs recently returned to Fiji and on 20 November 2023 were denied access to the FRCS portal for the company. They appear to now be fully excluded from access to WG Ltd and the WG Friendship Plaza project. Secondly, the Plaintiffs believe that the said three defendants intend to sell the property, or parts of it, at 59 Macgregor Road. Mr Hu deposes to this in his supplementary affidavit.

vii. There was some discussion with counsel regarding the wording of the proposed injunction orders and their purpose. Counsel stated that the Plaintiffs wished to restrain the three defendants from selling part or all of the property at 59 Macgregor Road. The first and third framed orders in the Summons are designed for this. Counsel also stated that the Plaintiffs wish to restrain the said defendants from making any further changes to the share structure of WG Ltd until the proceeding is determined; the Ex-Parte Summons does not, however, contain such an order and counsel suggested that I could make the order from the fourth catch all order. Finally, the Plaintiffs seek an order compelling the three defendants to consult with them on the expenditure and future plans of the WG Friendship Plaza project.

[32] On 13 December 2023, the Plaintiffs filed a supplementary affidavit for Mr Hu as well as supplementary submissions. Counsel reformulated the proposed injunctive orders and now seek the following orders:

- i. That the First, Second, and Third Defendant are restrained by themselves and/or their servants or agents and/or whosoever from proceeding with any dealing including but not limited to advertising for sale, transfer, lease or the sale of property, comprised in Certificate Title – Volume 17, Folio 1655, DP 2165, Allotment 8, Section XXXI, more commonly described as Lot 59 Macgregor Road, Suva otherwise known as the WG Friendship Plaza or in any manner whatsoever, interfering with the said property, until the hearing and final determination of this proceeding or until further orders of the court.
- ii. That the First, Second and Third Defendant be restrained by themselves and/or through their servant, agents and/or whosever from further dealing with the share structure of WG International Real Estate PTE Limited in the form of sale, purchase, assignment or in any manner whatsoever until the hearing and final determination of this proceeding or until further orders of the court.
- iii. That the First, Second and Third Defendant be restrained by themselves and/or through their servant, agents and/or whosever from marketing, advertising and or selling the strata titles of the WG

Friendship Plaza until the hearing and final determination of this proceeding or until further orders of the court.

iv. That the Plaintiffs be authorized to take control of the company and majority shareholders pursuant to the share structure of WG International Real Estate PTE Limited as of 1<sup>st</sup> of March 2018 (Form A11 ROC) and 11<sup>th</sup> December 2018 (Form R1 ROC) filed with the Fourth Defendant respectively until the final determination of this action in order to protect his investment and investment of others.

iv. That this Court impose any additional order it deems fit in the circumstances of the matter.

### *Law and Principles*

[33] The Plaintiff's application is made under Order 29 Rule 1. The provision reads:

*(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 the 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.*

[34] The law is settled on where the Court may make an order for an interim injunction.

[35] Pathik J provided a helpful summary of the principles and authorities in **Korovulavula & Anor v Fiji Development Bank [1997] FJHC 197**. The High Court was considering whether to extend or dissolve an injunction already granted. His Lordship stated:

*The principles to be followed in considering the granting of injunctive relief are set out in the leading case of AMERICAN CYANAMID CO. v ETHICON LTD (1975) A.C. 396. The House of Lords there decided that in all cases, the Court must determine the matter on a balance of convenience, there being no rule that an applicant must establish a prima facie case. The extent of the court's duty in considering an interlocutory injunction is to be satisfied that the claim is "not frivolous or vexatious", in other words, "that there is a serious question to be tried".*

*In CYANAMID (supra) at page 406 LORD DIPLOCK stated the object of the interlocutory injunction thus:*

***".... to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where "the balance of convenience" lies".***

*(emphasis mine)*

*A similar view was expressed by McCARTHY P in NORTHERN DRIVERS UNION v KUWAU ISLAND FERRIES (1974) 2 NZLR 61 when he said:*

***"The purpose of an interim injunction is to preserve the status quo until the dispute has been disposed of on a full hearing. That being the position, it is not necessary that the Court should have to find a case which would entitle the applicant to relief in all events: it is***

***quite sufficient if it finds one which shows that there is a substantial question to be investigated and that matters ought to be preserved in status quo until the essential dispute can be finally resolved ... "***

*(ibid, 620)*

***"It is always a matter of discretion, and ... the Court will take into consideration the balance of convenience to the parties and the nature of the injury which the defendant, on the one hand, would suffer if the injunction was granted ... and that which the plaintiff, on the other hand, might sustain if the injunction was refused ..."***

*(ibid, 621).*

...

*As to "balance of convenience" the court should first consider whether if the Plaintiffs succeed at the trial, they would be adequately compensated by damages for any loss caused by the refusal to grant an interlocutory injunction.*

...

*In HUBBARD v VOSPER (1972) 2 WLR 359, LORD DENNING at p.396 gave some guidance on the principles of granting an injunction which I think is pertinent to bear in mind in this case when 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. For instance in Fraser v Evans [1969] 1 QB 349, although the plaintiff owned the copyright, we did not grant an injunction because the defendant might have a defence of fair dealing. The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules."*

[36] These same principles have been consistently applied up to the present time. In **Alizes Ltd v Commissioner of Police [2013] FJHC 596**, Tuilevuka J noted:

*11. Interim injunctions are a powerful discretionary remedy. But they are*

*not lightly granted. They are granted ex parte only if there is urgency. In other words, if to proceed normally (i.e. inter partes by Notice of Motion or Summons) would be a delay entailing irreparable or serious mischief, (see Order 29 Rule 1(2) as amended in 1991 in LN 61/91).*

12. *The applicant must show a strong enough case to justify the Court not hearing the other side's case. Usually, to show "urgency", the applicant must show that, unless the court intervenes with a restraining order, he has a legal right in the subject-matter of the case which is under an immediate threat of being violated. Apart from that, the applicant must convince the court that the balance of convenience favours the granting of the injunction ex-parte.*

[37] Balapatabendi J succinctly identified the test as follows in **Vanualevu Muslim League v Hotel North Pole & Ors [2013] NZHC 151**, at 17.4:

*What could be deduced from Lord Diplock's rulings in American Cyanamide Case are in fact tests to be adopted in dealing with an application for interim injunction. The tests could be summarized as follows:-*

1. *Is there a serious question to be tried?*
2. *Is damages an adequate remedy?*
3. *Where does the balance of convenience lie?*

### *Decision*

[38] In order for the Plaintiffs to be entitled to an interim injunction they must satisfy the three-pronged test identified above. Even should they do so, careful consideration needs to be given to the interim orders that this Court can make in the present case. The construction of the WG Friendship Plaza is ongoing and this Court does not wish to be an impediment to the completion of its proper construction.

*Is there a serious question to be tried?*

[39] It is not necessary for the Plaintiffs to demonstrate that they will succeed with their claim. It suffices, for the purposes of the present interlocutory application, that the Plaintiffs' claim is not hopeless. As Ajmeer J noted in **Deo v Hans [2018] FJHC 1113** at [31]:

*...the Court is required to investigate the merits to a limited extent only. All that needs to be shown is that the claimant's cause of action has substance and reality...*

[40] In **Andrews v Prasad** [2019] FJHC 904, Nanayakkara J stated:

*...there is no requirement that before an 'interlocutory injunction' is granted the plaintiff should satisfy the Court that there is a 'probability', a 'prima facie case' or a 'strong prima facie case' that if the action goes to trial he will succeed; but before any question of balance of convenience can arise the party seeking the injunction must satisfy the Court that his claim is neither frivolous nor vexatious; in other words that the evidence before the Court discloses that there is a serious question to be tried.*

[41] The allegations by the Plaintiffs against the first three defendants are serious. They include fraud and dishonesty. The first named Plaintiff has furnished documentary evidence, annexed to his two affidavits, that demonstrate that the Plaintiffs' allegations have legs.

[42] I have considered the defences filed for the defendants. The Second and Third Defendant have instructed the same solicitors while the First Defendant has instructed his own solicitors. It is evident from their defences that they paint a very different picture to the Plaintiffs. The three defendants say that the Plaintiffs began the project with financing from loans in China. The principal investor being Mr Hu's paternal cousin, who is also allegedly the father-in-law of the First Defendant. Mr Hu also allegedly owed money to the Second Defendant's father who converted the loan into shares in WG Ltd. The defendants say that several written agreements between 2017 and 2019, mainly written in the mandarin language, as well as several meetings in Fiji and China, each minuted, led to an agreement to transfer shares to the First and Second Defendant. They say that their shareholding and directorship in WG Ltd is, therefore, legitimate. Further, they say that the Plaintiffs failed to discharge their obligations as directors of A Plus Ltd from 2019 and were replaced by the First and Third Defendant. The defendants say that were entitled to sell the Queen Elizabeth Drive property. There are allegations thrown back at the Plaintiffs of misuse of WG Ltd monies and abandoning the project between 2019 and 2023. The First Defendant makes the point that Fiji's borders reopened in 2021 and yet the Plaintiffs did not return until 2023. The First



Defendant counter claims on the basis that the Plaintiffs' claim is brought in bad faith with ulterior motives, being to enrich themselves. They say the claim is an abuse of process.

[43] As can be seen, there are accusations and counter accusations made between the Plaintiffs and first three defendants. The defendants will likely have documents that they too can produce to support their case. Many of the documents will be in mandarin and no doubt there will be email communications that each party will rely on, most likely also written in mandarin. It is inevitable that translations will be required and that the veracity of the documentation as well as credibility of the witnesses will take centre stage at the trial.

[44] I am left with two starkly competing pictures which cannot be resolved at this juncture, and nor am I required to do so in order to determine the present interlocutory application. I must simply be satisfied that there is substance to the Plaintiffs' claim. The two affidavits from Mr Hu suffice in that regard.

*Is damages an adequate remedy?*

[45] The Plaintiffs' counsel argues:

*37. ...throughout the years the first named Plaintiff had invested into the WG Project. Time and effort had been sacrificed by the first named Plaintiff in planning the Project believing that one day the Project will come to fruition. The vision that the first named Plaintiff had for the Project that one day the Project will become fully functional is something that cannot be compensated by either of the defendants.*

*38. A huge work was conducted by the first named Plaintiff in convincing investors to invest in the Project...The investors have entrusted their investment on the project and on the first named Plaintiff. Therefore, the first named Plaintiff is not able to recover for the losses and compensate the investors should the property be sold...<sup>2</sup>*

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<sup>2</sup> Counsel's written submissions dated 12 December 2023.

- [46] For several reasons, I am inclined to agree with the Plaintiffs that damages are not an adequate remedy in the present matter.
- [47] Firstly, if the Plaintiffs are to be believed they have invested a substantial part of their lives and finances into the WG Friendship Plaza project and the three defendants have fraudulently ripped it away from them. Damages will not repair that damage.
- [48] Secondly, there is a reputational risk to the Plaintiffs with their investors that damages will unlikely remedy.
- [49] Thirdly, the main actors in this litigation all appear to be from overseas and if no interim protections are placed over the primary object of this proceeding, being WG Ltd and WG Friendship Plaza, then there is a risk that any determination by this Court in favour of the Plaintiffs, if that is the outcome, will be meaningless.

*Where does the balance of convenience lie?*

- [50] It is not clear how far the WG Friendship Plaza is from completion. It will, however, not be soon. There appears to still be much construction ahead. The Plaintiffs remain significant shareholders in the company as well as directors. They have a sizable stake in the company even if, it appears, they are effectively excluded from the affairs and operations of the company. Certainly, the construction of the WG Friendship Plaza must be permitted to continue. Orders from this Court should not cause the construction to grind to a halt.
- [51] The balance of convenience lies in maintaining the status quo until the proceeding is determined. If the First and Second Defendants transfer their shares and/or sell the WG Friendship Plaza, in part or full, to bona fide purchasers this will have the effect of thwarting the Plaintiffs' claim.

## *Conclusion*

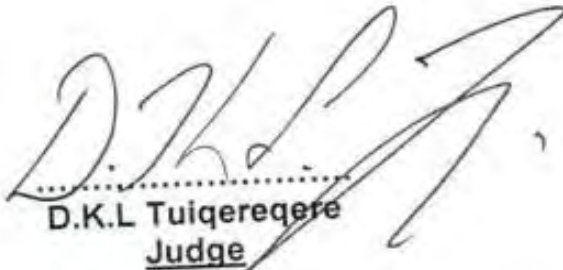
- [52] I accept that the Plaintiffs have satisfied the three-pronged test and are entitled to interim injunctive relief. I do have concerns, however, that the Plaintiffs have not properly given their undertaking as to damages in the affidavits and not supplied information to show that they can satisfy the undertaking.
- [53] In terms of the injunctive orders, I am satisfied that the first three orders sought are necessary to maintain the status quo. However, I am not satisfied that there is a proper basis for the fourth order sought, namely seeking authorization for the Plaintiffs to take control over the affairs of WG Ltd and the construction of the WG Friendship Plaza.
- [54] Finally, there has been a development whilst preparing this Judgment. The Second and Third Defendants have filed a Summons to strike out the Plaintiffs' claim with a supporting affidavit from the Third Defendant.

## *Orders*

- [55] With the aforementioned matters in mind, I make the following orders:
- i. The First, Second, and Third Defendant, and their servants and agents are hereby restrained from proceeding with any advertising for sale, transfer, lease or the sale of property, comprised in Certificate Title – Volume 17, Folio 1655, DP 2165, Allotment 8, Section XXXI, more commonly described as Lot 59 Macgregor Road, Suva otherwise known as the WG Friendship Plaza, until further orders of the court.
  - ii. The First, Second and Third Defendant, their servants and agents are hereby restrained from any changes or dealing with the share structure of WG International Real Estate PTE Limited in the form of sale, purchase, assignment or in any manner whatsoever until further orders of the court.

- iii. The First, Second and Third Defendant, their servants and agents are hereby restrained from marketing, advertising and or selling the strata titles of the WG Friendship Plaza until further orders of the court.
- iv. The Plaintiffs are to serve this Judgment on each of the defendants by or before 4pm on Wednesday 20 December 2023.
- v. The Plaintiffs are to file and serve by or before 4pm on 19 January 2024 an affidavit providing an undertaking as to damages for these interim injunction orders and supplying information demonstrating their ability to satisfy such undertaking.
- vi. This matter is to be listed for mention on Monday 29 January 2024 at 9am to consider the Plaintiff's affidavit as to damages as well as deal with the Second and Third Defendant's Strike Out Summons.
- vii. The costs of the Plaintiffs' application to be costs in the cause.



  
D.K.L Tuiqereqere  
Judge

At Suva this 19<sup>th</sup> day of December 2023.

**Solicitors:**

**To: Vosarogo Lawyers for Plaintiffs**